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separate paging is given to this Part in order that it may be filed as a separate compilation

PART V

introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill, was introduced in the Legislative Assembly on the February, 1943 :—

L. A. BILL No 1 of 1943

A Bill to make certain provision for appeals in criminal cases tried by a High Court exercising original criminal jurisdiction

WHEREAS it is expedient to make certain provision for appeals in criminal cases tried by a High Court exercising original criminal jurisdiction :

It is hereby enacted as follows :—

1. This Act may be called the Criminal Procedure Amendment Act, 1943

2. After section 411 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code) the following section shall be inserted, namely :—

“411A. (1) Without prejudice to the provisions of section 449 any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the Letters Patent of any High Court, appeal to the High Court—

(a) against the conviction on any ground of appeal which involves a matter of law only ;

(b) with the leave of the appellate Court, or upon the certificate of the judge or judges who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a matter

Insertion
of new
Section 411A
in A t V
of 1898

Appeal from
sentence of
High Court.

of fact only or a matter of mixed law and fact or any other ground which appears to the appellate Court to be a sufficient ground of appeal and

- (c) with the leave of the appellate Court against the sentence passed unless the sentence is one fixed by law

(^o) 1

of the High Court composed of not less than two judges being judges other than the judge or judges by whom the original trial was held and if the constitution of such a Division Court is impracticable the High Court shall report the circumstances to the Provincial Government with a view to the transfer of the appeal under section 527 to another High Court

- (3) Subject to such rules as may from time to time be made by His Majesty in Council in this behalf and to such conditions as the High Court may establish or require an appeal shall lie to His Majesty in Council from any order

Amendment
of section 412
Act V of 1898

3 In section 412 of the said Code after the word by the words a High Court shall be inserted

Amendment
of section 413
Act V of 1898

4 In section 413 of the said Code after the words in which in both places where they occur the words a High Court or shall be inserted

Amendment
of section 417
Act V of 1898

5 In section 417 of the said Code after the words present an appeal to the High Court the words from an original order of acquittal passed by a High Court or shall be inserted

Deletion of
section 434
Act V of 1898

6 Section 434 of the said Code shall be omitted

Amendments of
Letters Patent
of High Courts
and certain
Acts.

7 (1) CLAUSES 25 26 and 41 of the Letters Patent for the High Courts at Bombay at Madras and at Fort William in Bengal clauses 18 19 and 32 of the Letters Patent for the High Court at Allahabad clauses 18 19 and 31 of the Letters Patent for the High Courts at Lahore and at Nagpur and clauses 18 19 and 33 of the Letters Patent for the High Court at Patna shall cease to have effect

(2) In the Oudh Courts Act 1925 —

- (a) to sub section (1) of section 14 the following proviso shall be added namely —

Provided that nothing in this sub section shall apply to a judge or a Bench of Judges exercising original criminal jurisdiction

U P Act
of 1925

(b) section 15 shall be omitted

(3) In the Sindh Courts Act, 1926 —

(a) to section 12 the following proviso shall be added namely —

Provided that nothing in this section shall apply to a judge of the Chief Court exercising the jurisdiction of the Chief Court as the principal criminal Court of original jurisdiction for the sessions division of Karachi ;

(b) section 13 shall be omitted

STATEMENT OF OBJECTS AND REASONS

At the instance of the Bombay High Court the Bombay Government proposed to the Central Government in May, 1941, that legislation should be undertaken to provide for a restricted right of appeal in criminal cases against the decisions of a High Court exercising its original jurisdiction, on the lines contained in the Criminal Appeal Act 1907 (7 Edw 7, c 23)

The Letters Patent of the various High Courts prohibit appeals in such cases but provide a restricted power of review corresponding to that embodied in section 434 of the Code of Criminal Procedure 1898. The Code of Criminal Procedure provides by section 449 enacted in 1923 to implement a recommendation in the Report of the Racial Distinctions Committee for appeals from decisions in cases tried before a High Court by a jury under the special provisions of Chapter XXXIII, but contains no provision for appeals in similar trials not held under that Chapter.

This absence of any general provision for appeals from the decisions of a High Court exercising original criminal jurisdiction is perhaps attributable to the state of English law on the subject when the Letters Patent were issued long before the passing of the Criminal Appeal Act 1907. Provincial Government and High Court proposals were unanimous in the direction indicated.

This Bill is designed to give effect to the conclusions which have emerged from a collation of the opinions expressed by the various authorities consulted.

S SULIAN AHMED

NEW DELHI

17th November, 1942

M N KAUL

Secy to the Govt of India

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 10th February, 1943 —

L A BILL No 2 of 1943

A Bill further to amend the Motor Vehicles Act, 1939

WHEREAS it is expedient further to amend the Motor Vehicles Act, 1939, for the purpose hereinafter *IV* of 1939 appearing,

It is hereby enacted as follows —

short title.

1. This Act may be called the Motor Vehicles (Amendment) Act, 1943.

Amendment
of section 1
Act IV of
1939

2 In sub section (3) of section 1 of the Motor Vehicles Act, 1939, for the figures "1943" the figures *IV* of 1939 "1946" shall be substituted

STATEMENT OF OBJECTS AND REASONS.

Several representations have been received by the Government of India that the operation of Chapter VIII of the Motor Vehicles Act, 1939, relating to insurance of motor vehicles against third party risks, which is to come in force on the 1st day of July, 1943, should be postponed

The cost of operating motor vehicles has increased considerably in present conditions. Compulsory insurance, if introduced at this stage, will throw heavy additional burden on owners of motor vehicles. Insurance companies are also short handed owing to the war, and this is likely to stand in the way of operation of the provisions of the Chapter. Co operative insurance societies provided for by section 108 of the Act, are not likely to flourish during war in view of the heavy financial liabilities imposed upon them by the Act. Moreover, with the use of private cars drastically curtailed during the war, third party risks have been reduced and actuarial calculations rendered difficult. Also in present conditions when the Central and Provincial Governments are preoccupied with problems connected with the war, it is not easy to make the elaborate preparations necessary, including the framing of rules and the drawing up of forms, for the introduction of compulsory insurance.

The Bill, accordingly, seeks to postpone the operation of Chapter VIII of the Motor Vehicles Act 1939, until the 1st day of July, 1946

G V BEWOOR

New Delhi

The 29th January, 1943

M N KAUF

Secy to the Govt of India.

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 10th February, 1913 —

L A BILL No 5 of 1913

A Bill further to amend the Government Savings Banks Act, 1873, and the Post Office Cash Certificates Act, 1917.

V of 1873.
XVIII of
1917.

WHEREAS it is expedient further to amend the Government Savings Banks Act, 1873, and the Post Office Cash Certificates Act 1917 for the purposes hereinafter appearing,

It is hereby enacted as follows —

1. This Act may be called the Government Savings Banks (Amendment) Act, 1913 Short title

V of 1873;

2. For section 4 of the Government Savings Banks Act, 1873, the following section shall be substituted, namely — Substitution of new section for section 4 Act V of 1873

XXXIX of
1925

‘ 1 If a depositor dies and probate of his will or letters of administration of his estate or a succession certificate granted under the Indian Succession Act, 1925, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is then— Payment on death of depositor

(a) if the deposit does not exceed five thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, and

(b) within the aforesaid limit of five thousand rupees, any officer employed in the management of a Government Savings Bank who is empowered in this behalf by a general or special order of the Central Government may, to the extent to which he is empowered by such order and subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate ”

XVIII of
1917.

3. In sub section (1) of section 3 of the Post Office Cash Certificates Act, 1917, for the words and figures “sections 4 and 8” the word and figure “section 8” shall be substituted Amendment of section 3 Act XVIII of 1917

STATEMENT OF OBJECTS AND REASONS.

Section 4 of the Government Savings Banks Act, 1873, restricts cases in which the Secretary, that is to say, the Postmaster General for the area in which the Savings Bank is situate, may authorise the payment of a deposit where probate of the will of the deceased depositor or letters of administration are not produced, to those cases in which the deposit does not exceed three thousand rupees. The corresponding provision of Act XVIII of 1917, applicable to Post Office cash certificates, fixes the limit at five thousand rupees. The Bill provides that this higher figure shall henceforth be the limit for deposits in Government Savings Banks also.

2 Other officers employed in the management of a Government Savings Bank can, under the law as it stands, be empowered to pay deposits in such circumstances only where the deposit does not exceed one hundred rupees. The Bill proposes to extend this limit to five thousand rupees, with a view to accelerating the disposal of claims to deposits of deceased depositors.

3 The revision of section 4 of the Government Savings Banks Act, 1873, renders necessary a consequential amendment of section 3 of the Post Office Cash Certificates Act, 1917.

G V BEWOOR

NEW DELHI

The 26th January, 1943

M. N KAUL,

Secy to the Govt of India

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following report of the Select Committee on the Bill further to amend the Indian Railways Act 1890 was presented to the Legislative Assembly on the 10th February 1943 —

We, the undersigned members of the Select Committee to which the Bill further to amend the Indian Railways Act 1890 was referred have considered the Bill and have now the honour to submit thus our Report with the Bill as amended by us annexed thereto

In sub section (I) of the proposed new section 82A to be inserted in the Act we have omitted the word direct in two places as being unnecessary. We have also corrected the marginal note to the section

We have increased the limit set to the liability of a railway administration from seven thousand rupees to ten thousand rupees and we have omitted the provision which specifically debarred a passenger travelling without having with him a proper pass or ticket from having any right to compensation if involved in an accident

2 The Bill was published in the Gazette of India dated the 19th September 1942

3 We think that the Bill has not been so altered as to require republication and we recommend that it be passed as now amended

SULTAN AHMED
F C BENTHALL
J H F RAPER
A N CHATTOPADHYAYA
NILAKANTHA DAS
R D DALAL
MUHAMMAD NAUMAN

NEW DELHI,
The 10th February 1943

L A BILL No 31 OF 1942

[AS AMENDED BY THE SELECT COMMITTEE]

(Words underlined indicate alterations suggested by the Committee, asterisks indicate omissions)

A Bill further to amend the Indian Railways Act 1890

IX of 1890 WHEREAS it is expedient further to amend the Indian Railways Act 1890 for the purpose hereinafter appearing,

It is hereby enacted as follows —

1 This Act may be called the Indian Railways Short title (Amendment) Act 1943

Insert on of
new section
after section
82 Act IX of
1890

2 In Chapter VII of the Indian Railways Act 1890, ^{IX of 1890}
after section 82 the following section shall be inserted,
namely —

Liability of
Railway Ad-
ministration
in respect of
accidents to
trains carrying
passengers

82A (1) When in the course of working a railway an accident occurs being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a * * result of such accident, and for personal injury and loss, destruction or deterioration of animals or goods owned by the passenger and accompanying the passenger in his compartment or on the train, sustained as a * * result of such accident

(2) The liability of a railway administration under this section shall in no case exceed ten thousand rupees in respect of any one person

* * *
* * *

M N KAUL,
Secy to the Govt of India

The Gazette of India

PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, FEBRUARY 20, 1943

Separate paging is given to this Part in order that it may be filed as a separate compilation

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Joint Committee on the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi was presented to the Legislative Assembly on the 11th February 1943 —

We, the undersigned, members of the Joint Committee to which the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi was referred have considered the Bill and the papers noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto

The Bill as introduced provided for one Majlis or controlling body, which was to administer both Sunni and Shia wakfs and was to contain at most three Shia members out of the total of 15 with however a provision that on matters affecting exclusively wakfs of one community the members of that community only should vote

We have rejected this arrangement and have provided for the establishment of two separate controlling bodies, one for each community. The Sunni Majlis remains as before a body of 15 members, but its composition has been radically changed. We have provided that at least 10 of
of
Ma

smaller body in view of the smaller number of wakfs with which it will have to deal. We have proposed that it should consist of 5 members only, 4 elected by the three leading Shia Associations in the Province and the fifth nominated by Government

Neither body can have an extensive income and we consider the machinery in the Bill as introduced unnecessarily expensive and unduly elaborate. We consider that the Shia Majlis will not in existing circumstances be able to afford to pay any officers and we have accordingly provided that its one executive officer, the Nazir, shall serve in an honorary capacity, and we have modified the

Similarly, in the case of the Sunni Majlis we have abolished the provision for payment of salary to the Sadr or chairman and for the payment of travelling and other allowances to members of the Majlis. The Nazir as the chief executive officer of the Majlis will alone

receive remuneration. We have also omitted the provision, contained in Chapter VI of the Bill as introduced, for the appointment of wakf committees.

We have also omitted Chapter X of the Bill as introduced, which created and provided penalties for certain offences by mutawallis. The actions made punishable as offences by this Chapter should, we propose, be dealt with by rendering mutawallis liable to dismissal when those actions are sufficiently aggravated. We have accordingly provided in clause 36 (2) that the Majlis, or, with previous sanction, any person interested in the wakf, may apply to the District Judge to have a mutawalli dismissed for any of the actions which Chapter X made offences. The Bill as introduced gave by clause 25 (2) power to the Majlis itself to remove a mutawalli in certain circumstances, one of which was a conviction under Chapter X. This power we have removed, substituting for it the procedure of application to the District Judge just described.

A further important modification of the Bill made by us is the provision contained in clause 25 (2) for the immediate supersession by the Majlis of the committees at present managing the Jama Masjid and the Fatchpuri Masjid, and of the Anjuman Mo'yyed ul Islam. This proposal in its main outlines was put forward in clause 9 of the Bill introduced in the Council of State in 1940 by the Honourable Mr. Hossain Imam, one of our members.

Numerous other changes have been made by us in the Bill. Many are

power the in necessary respects. The more important of these are noticed clause by clause in the remarks which follow.

Clause 1 (3) and clause 69 enable the Nazir to be appointed at once,

to function during the period between the passing of the Act and its first coming into force, while the extensive preparatory work of drawing up rules and arranging for elections is in progress. Provision is also made in clause 69 for dealing with unforeseen difficulties.

Clause 2—"District Judge" has been defined as including a Subordinate Judge, in order to lighten the burden that might be imposed on the District Judge if he had to deal with all the applications for which the Bill provides.

Clause 3—The addition made in this clause aims at excluding from the operation of the Bill certain wakfs of the nature of Wakf al al Aulad, a term not used in the Bill.

Clauses 5, 6 and 7 give effect to our conclusions regarding the necessity for two separate controlling bodies and the composition of these bodies. Sub clause (4) of clause 7 provides against the difficulty that the electorate referred to in clause 7 (1) (d) cannot be determined until details of the wakfs in the Province are ascertained by means of clauses 31 (old 29) and 41 (old 40) of the Bill. Sub clause (5) is aimed at securing among the members of the Majlis persons with expert qualifications, in the three spheres referred to.

Clauses 9 and 13—The changes made ensure that a person subject to one of the specified disqualifications shall not only not become a member, but if he is a member shall be liable to removal. Clause 13 has been simplified by the removal of unnecessary details.

Clause 11 (new) provides for a possible contingency overlooked in the Bill as introduced.

Clause 12 of the Bill as introduced has been omitted in consequence of our decision that the Sadr shall not be a paid officer and that allowances shall not be paid to members of the Majlis.

Clause 18—The proviso and sub clause omitted are unnecessary, in consequence of the setting up of a second Majlis. *Clause 33 (c)* [old 32 (e)] provides for the settlement of the doubts referred to in the sub clause which has been omitted.

Clauses 21 and 22—We have abolished the necessity for the Provincial Government's approval of the appointment of the Nazir and of the terms of his service. We have made special provision for the employment of an unpaid Nazir by the Shia Majlis.

Clause 23—The reference to an additional functionary, the Nazim, has been omitted.

Clause 24 has been revised to vest in the Nazir as chief executive officer control over the lower paid officers of the Majlis and to secure that he shall be consulted before the Sadr exercises any of the powers now given to him to deal with the higher paid officers.

Clause 25—The new sub clause (2) and the omission of clause (h) of sub clause (3) [formerly (2)] and the former sub clause (3) have already been referred to. The new sub clauses (4) and (5) empower the Majlis in any future contingency to supersede a committee administering a wakf in the same way as sub clause (2) now provides for the immediate supersession of certain existing committees.

Clauses 29 and 30, both new, give the Majlis two specific powers necessary for its proper functioning. In connection with clause 29 additional sub clauses (g) and (h) have been added to clause 55 (old 52).

Clause 32 (new) makes a provision, which we think necessary, for the exercise by the Sadr of the powers of the Majlis in emergencies when the Majlis itself cannot meet to exercise those powers.

Clause 34 (old 33)—We have added a new sub clause (5) to ensure that when a claim of the kind referred

to in clause (b) of sub clause (2) arises, possibly involving non Muslims and title to property, the question should be decided by a full and regular hearing.

Clause 35 (old 34)—Both here and in clause 36 (old 34) we have inserted words requiring that the sanction either of the Majlis or of the Government must be obtained before a private person with no qualification but that he is interested in the wakf can launch proceedings against a mutawalli.

Clause 36 (old 35)—This clause was designed to replace section 92 of the Code of Civil Procedure which section has been put out of action by clause 4 of the Bill. Section 92 of the Code of Civil Procedure, however, provides for the filing of suits whereas clause 35 of the Bill as introduced provided for similar forms of action upon a mere

be brought. Our revised sub clause (1) is intended more nearly to reproduce the effect of section 92 of the Code of Civil Procedure and provides that action must take the form of a suit.

Clause 36 of the Bill as introduced,

or uncertain, that the funds relating to that object should be utilised for the purpose of imparting education to Muslims, has been omitted as conferring an excessive and inadvisable power on the District Judge.

Clauses 37 and 39 (old 38)—The omission of certain limiting words has widened the scope of these clauses.

Clause 38 is new and gives the Majlis a necessary power.

Clause 42 of the Bill as introduced has been omitted in consequence of the decision not to have wakf committees.

Clauses 45, 46, 47 and 48 reproduce in a more suitable position clauses 63 to 66 of the Bill as introduced

Clause 52 (new) makes the necessary provision to free the Shia Majlis from expenditure on audit expenses

Clause 54 (old 51) —We have exempted wakfs whose income is less than Rs 500 annually from liability to pay fees, and we have excluded from the computation of net income a reasonable amount for collection charges. We have also made it clear that offerings given to the mutawalli personally are not to be deemed to be included in the income of the wakf

Clause 56 —This redraft of clause 53 of the Bill as introduced is based on the terms of section 53 of the Bengal Wakf Act, 1934

Clause 55 of the Bill as introduced has been omitted as unnecessary in the conditions prevailing in the Delhi Province

Clause 59 (old 57) —We have revised the clause so as to confer only upon the Sadr, the Nazir and auditors the character of public servants

Clause 64 (old 62) —We have removed unnecessary words in sub-clause (1) and have omitted the provisions providing a special period of limitation

Clause 68 (old 70) —We have amplified the clause so as to cover all possible matters that may need to be covered by bye laws

Clause 69 (new) —Our reasons for inserting this clause have been explained in the remarks on clause 1 (3)

2 The Bill was published as follows —

IN ENGLISH		Date
Gazette		
Gazette of India		15th February 1941.
Port St. George Gazette		10th May 1941
Bombay Government Gazette		10th May 1941
Calcutta Gazette		10th April 1941
United Provinces Government Gazette		31st May 1941
Punjab Gazette		23rd and 30th May, and 6th June 1941.
Central Provinces and Berar Gazette		16th May 1941
Assam Gazette		10th May 1941
Bihar Gazette		18th June 1941
Orissa Gazette		30th May 1941
Coorg Gazette		2nd June 1941
Mad Government Gazette		22nd May 1941
North West Frontier Province Government Gazette		16th May 1941

IN THE INDIAN LANGUAGES		
Province	Language	Date
Madras	Hindustani	10th June 1941.
Bombay	Marathi	} 24th July 1941
	Gujarathi	
	Kanaree	
	Urdu	28th August 1941

3 We think that the Bill has not been so altered as to require republication, and we recommend that it be passed as now amended

S SULTAN AHMED
MD USMAN
KHURSHID ALI KHAN
MOHD YAMIN KHAN
ISMAIEL ALIKHAN
ZAFAR ALI KHAN
GHULAM BHIK NAIRANG
S M PADSHAH
S MD HUSAIN
LIAQUAT ALI KHAN
* M A GHANI
HOSSAIN IMAM
SULEMAN CASSIM MITHA
S MURTUZA
ALI BUKSH MD HUSSAIN
R TOTTFNHAM

NEW DELHI,
The 11th February, 1943

MINUTE OF DISSENT

I do not agree with the opinions expressed in the report of the Joint Select Committee paragraphs 3 and 4. The Bill as introduced was neither unnecessarily expensive nor unduly elaborate. The Bill as emerged out of the Select Committee contains 69 clauses whereas the original one consisted of 70 clauses. The composition of the Majlis has not even been radically changed as laid down in the report, only the electorate of 7 elected members under sub-clause (d) of clause 8 has been modified and a Shia Mafis has been created on the suggestion of the Honourable Sir Syed Sultan Ahmed the Iqbal Member of the Government of India.

In view of the changes introduced in sub-clause (2) of clause 25 of the Bill superseding the Juma Masjid Committee, Latchpuri Masjid Committee, Anjuman Moudul Islam and others, their direct managements with a big income of over two lakhs of rupees a year will be handed over to the Majlis and it would be quite unfit to leave the management of such big wakf estates in the hands of the Nazir whose only qualification as hitherto defined in the Bill is to be a Sunni Muslim. Whereas the original Bill provided for a legal trained man to be a whole time salaried Sadr, I think it will be a bad economy to dispense with the services of such a Sadr and thereby to curtail a trifling expense. The Nazir will be over busy particularly during the first few years in collecting informations regarding wakf properties when a set of dishonest Mutawallis and other interested persons will try their level best to counteract his activities. Moreover he shall have to arrange many things such as to bring the office in running order, to submit reports against dishonest Mutawallis for actions, to prepare electoral roll and to take steps to trace out wakf properties and in doing so he shall have to fight with very influential and wealthy interested persons. These days wakf money is wasted and misappropriated in different ways for instance to give clothes and blankets and quilts to the poor, to give loans to private individuals and contributions to the favourite persons and institutions, to grant money for fictitious purchase of library books, to give stipends to supposed students and to buy and sell wakf properties without any legal sanctions. An enormous effort will be needed to stop and check all these wastes. A small portion of such saving can best be utilised over the salary of the Sadr.

Several omissions have been made which are harmful to the Majlis and will be made good in the shape of amendments, for instance penal clauses though a few in number have been omitted with the result that for every disobedience of its order the Majlis will have to move the District Judge a very busy officer, for the removal of Mutawallis, and the Majlis shall have to bear the burden of heavy expenses of litigation and protracted trials for years together. It was meant that some fines by a first class Magistrate would have sufficed to set right their neglects. It is a matter of consideration as to what would happen if an Auditor goes to a Mutawalli and the Mutawalli refuses to get his accounts audited or a Mutawalli refuses to submit his budget reports or other returns called for by the Majlis. All the works will be kept in abeyance till the decision of the District Judge is had for the removal of the said Mutawalli and then to wait further more for the appointment of a new Mutawalli. Besides actions can only be taken for repeated faults.

The omission of clause 36 of the original Bill will entail great hardships to local institutions. It empowered the Majlis to spend with the sanction of the District Judge surplus money of wakfs whose objects, if vague and

uncertain, for imparting education to Muslims. It has hitherto been the usage in Delhi to utilise such surpluses over the education of Muslims, so I think by the omission of the clause 30 several institutions like the Anglo Arab H. E. School will have to be closed.

Clause 3—The addition made in clause 3 of the Bill is not in the interest of wakfs called wakfs al al ruid under section 7 of Act VI of 1919. I think if necessary some safeguards should be provided as in sections 6 (II) 3 42 (3) and 19 (1) of the Bengal Wakf Act.

Clause 25—Sub clause (2) of clause 25, as well as sub clauses (4) and (5) should be made independent clauses. Consequential changes are required to be made in sub clause (3) of clause 25 after part (p).

Clause 26—A new sub clause has to be added to make the decision of the District Judge as final.

Clause 28—A new clause as clause 28A is deemed necessary empower the Majlis to compel the attendance of witnesses and production of documents necessary for the conduct of inquiry under clauses 26 and 28.

Minor changes have to be made in clauses 36, 37, 39, 40, 51 and 54.

A new clause for the delegation of powers by the Majlis has to be added.

Again a new clause has to be added by which the law of limitation shall not apply to wakf properties.

The super-session of the Idgah Committee does not find place in clause 25 (3) as decided by the Select Committee. The omission should therefore be set right.

M. A. GHANI

9th February 1943

L. A. BILL No. 4 OF 1941

[AS AMENDED BY THE JOINT COMMITTEE]

(Changes made by the Committee are side lined or under lined, omissions are indicated by asterisks)

THE DELHI MUSLIM WAKFS BILL, 1943.

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- 40 Mutawalli to carry out orders of the Majlis
- 41 Registration of wakfs.
- 42 Budget of wakfs and submission of such budgets to the Majlis.
- * * * * *
- 43 Duties of mutawallis to give assistance in enquiries, etc.
- 44 Mutawalli or other person to deliver possession of wakf property, etc., in certain cases as ordered by the Majlis

CHAPTER VIIIAUDIT AND RECOVERY OF IRREGULAR EXPENSES

- 45 Appointment of auditor and audit of accounts of the Majlis
- 46 Submission of auditor's report to the Majlis and the Provincial Government
- 47 Majlis to consider auditor's report
- 48 Payment of expenses
- 49 Audit of accounts of wakfs
- 50 Certified amount recoverable as arrear of land revenue
- 51 Appeal against order of surcharge or charge
- 52 Special provisions as to audit in the case of the Shia Majlis and Shia wakfs
- * * * * *

CHAPTER IXTHE WAKF FUND

- 53 Creation of Wakf Fund.
- 54 Fee payable by wakfs to the Wakf Fund
- 55 Objects to which Wakf Fund may be applied

CHAPTER XMISCELLANEOUS

- 56 Bar to transfer of immovable property of wakf
- 57 Power of mutawalli to apply to Majlis for direction
- * * * * *
- 58 Orders of District Judge to have the force of and be appealable as decrees
- 59 Sadr, etc., to be public servants
- 60 Power to extend time.
- 61 Power to grant copies and certify such copies
- 62 Presumption and savings
- 63 Bar of suits
- 64 No action to be brought against the Majlis or the Sadr, etc., until after notice of cause of action
- * * * * *
- 65 Court fee leviable under this Act.
- 66 Provisions to have effect notwithstanding any other law
- 67 Power of the Provincial Government to make rules.
- 68 Power of the Majlis to make bye-laws
- 69 Provisions to facilitate the bringing into force of this Act

*A Bill to provide for the better administration of
Muslim Wakfs in the Province of Delhi*

WHEREAS it is expedient to provide for the better administration of Muslim Wakfs in the Province of Delhi,

It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

1 (1) This Act may be called the Delhi Muslim Wakfs Act, 1943 Short title
extent and
commence-
ment.

(2) It extends to the whole of the Province of Delhi

(3) Section 69 shall come into force at once. The rest of this Act shall come into force on such date not being later than six months from the date on which it is first published in the official Gazette after having received the assent of the Governor General as the Provincial Government may by notification appoint * * *

* * * * *

2 In this Act unless there is anything repugnant in the subject or context — Definitions.

- (a) committee means a committee appointed by the Majlis under section 20
- (b) District Judge includes a Subordinate Judge of the first class empowered by the District Judge to discharge any function assigned to the District Judge under this Act,
- (c) Majlis means the Sunni Majlis-e Awkaf Delhi or the Shia Majlis-e Awkaf Delhi established under this Act
- (d) 'member' means a member of the Majlis,
- (e) 'mutawalli' means any person, by whatever designation known, appointed to administer any wakf either verbally or by or under any deed or instrument or in accordance with the usage of such wakf or the District Judge or any other competent authority, and includes any person appointed by a mutawalli to perform the duties of a mutawalli and any * * * committee or any * person for the time being managing or administering any wakf property as such,

(f) 'Nazir' means the person appointed to be the Nazir e Awkaf under this Act,

(g) 'person interested in a wakf' means any person who is entitled to receive any pecuniary or other benefit from the wakf and includes—

(i) any person who has a right to pray or to perform any religious rite in a mosque, idgah, imambara, dargah, khankah, maqbarah, or any religious institution under the wakf,

(ii) the wakif and any descendant of the wakif, and

(iii) the mutawalli,

(h) 'prescribed' means prescribed by rules made by the Provincial Government under this Act,

(i) 'qualified accountant' means any person or class of persons declared by the Provincial Government, by notification in the official Gazette, to be qualified accountants for the purposes of this Act,

(j) 'Sadr' means the person appointed to be the Sadr of the Majlis under this Act;

(k) 'wakf' means the permanent dedication of any property, movable or immovable, for any purpose recognised by Muslim law as religious, pious or charitable and includes a wakf by user, and

(l) 'wakif' means a person who makes such a dedication as is referred to in clause (k)

Application
of Act

VI of 1915.

Act XX of
1915 of 1915
Act XLII of
1923 and section
22 of Act V of
1904 not to
apply to wakfs.
Act applies

4 The Religious Endowments Act, 1863 the Charitable and Religious Trusts Act 1920, the Mussalman Wakf Act 1923 and section 92 of the Code of Civil Procedure 1909 shall not apply to wakfs to which this Act applies.

XX of 1863.
XIV of 1920.
XLII of 1923
V of 1909.

CHAPTER II

CONSTITUTION OF THE MAJLIS

5 (1) As soon as possible after this Act comes into force there shall be established for the Province of Delhi, a Majlis, to be called the Sunni Majlis e Awkaf Delhi, and a Majlis to be called the Shia Majlis e Awkaf Delhi, to discharge respectively in regard to Sunni wakfs and Shia wakfs in the Province of Delhi the functions assigned to the Majlis by this Act

Constitution
and incorpora-
tion of the
Majlis

(2) The Majlis shall be a body corporate by the name of the Sunni Majlis e Awkaf, Delhi or Shia Majlis e Awkaf, Delhi as the case may be, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to transfer any such property subject to the prescribed conditions and restrictions and shall by the said name sue and be sued

6 The Sunni Majlis e Awkaf Delhi shall consist of sixteen members and the Shia Majlis e Awkaf Delhi, all consist of five members

Strength of
the Majlis

7 (1) Of the members of the Sunni Majlis e Awkaf, Delhi —

Composition of
Majlis

- (a) two shall be persons nominated by the Provincial Government
- (b) two shall be persons elected by a joint electorate consisting of the Muslim members of the Delhi Municipal Committee the New Delhi Municipal Committee the Notified Area Committees and the Delhi District Board
- (c) two shall be persons elected by the Muslim members of the Anglo Arabic College and School Society and the Jamia Millia Association jointly
- (d) one shall be a person elected by the mutawallis of wakfs registered under this Act
- (e) five shall be persons elected by the Muslim members of the two Chambers of the Central Legislature jointly,
- (f) three shall be persons co-opted by the members referred to in clauses (a) to (e)

(2) Of the members of the Shia Majlis e Awkaf, Delhi —

- (a) one shall be a person nominated by the Provincial Government
- (b) two shall be persons elected by the members of the Anjuman e Shiatus Safa Delhi,
- (c) one shall be a person elected by the members of the Anjuman e Isna Ashariya New Delhi,
- (d) one shall be a person elected by the members of the Anjuman Husami Delhi

(3) The members referred to in clauses (a), (b), (c), (d) and (f) of sub section (1) shall be persons who are and have been for at least three years resident in the Province of Delhi at the time of nomination, election or co option

(4) The member referred to in clause (d) of sub section (1) may, on the first constitution of the Majlis, be nominated by the Provincial Government, but a person so nominated shall hold office only until he can be replaced by a member elected as provided in that clause, and the member so elected shall hold office only for so long as the member replaced would have held office had he not been replaced

(5) Of the members referred to in clause (f) of sub section (1) one shall be an engineer, one shall be a lawyer of not less than ten years' standing and one shall be an Alim

Appointment
(1) and a 1
term of office
of members

8 * * * * *

(1) The Majlis shall elect as Sadr of the Majlis one of the persons appointed to be members thereof

(2) The term of office of a member of the Majlis shall, save as otherwise provided in this Act, be five years from the date of the publication of his name in the official Gazette under section 12 and shall include any further period which may elapse between the expiration of the said five years and the date of the first meeting of the next succeeding Majlis at which a quorum is present

Disqualifica
tions of *
members.

9. A person shall not be eligible to be or to remain a member of such person—

(a) in the case of the Shia Muslim is not
Shia Muslim,
Muslim,

(b) is less than twenty five years of age,

(c) is of unsound mind and stands so declared by a competent Court,

(d) has applied for being adjudged an insolvent or is an undischarged insolvent,

* * * * *

(e) has been convicted of any offence involving moral turpitude

(f) has, on any previous occasion, been removed from office

- (g) except in the case of a person to be elected by the mutawallis of wakfs registered under this Act, is a mutawalli of, or holds any office of profit under, any wakf to which this Act applies

10. If any member is unable by reason of his death, resignation, removal or otherwise to complete his full term of office, the vacancy so caused shall be filled by the nomination, election, or co-option, as the case may be, of another person and the person so appointed * * shall fill such vacancy for the unexpired portion of the term for which the member in whose place such person is nominated, elected or co-opted would otherwise have continued in office. Filling of casual vacancies.

11. If any of the bodies referred to in clauses (b), (c), (d), (e) or (f) of sub-section (1) or clauses (b), (c) or (d) of sub-section (2) of section 7 fails, within such time as the Provincial Government considers reasonable, to make the appointments referred to in those clauses, or, on the occurrence of any casual vacancy, to fill that vacancy as provided in section 10, the Provincial Government may nominate persons as members of the Majlis to fill such vacancies. Procedure on failure of electorate to appoint member

12. The name of the Sadr and of every member appointed * * under section 7, 10 or 11 shall be published by the Provincial Government in the official Gazette. Publication of names of Sadr and members.

* * * * *

13. The Provincial Government may remove from office— Removal of Sadr and members.

- (i) the Sadr or any member, if the Sadr or such member—

(a) is or becomes subject to any of the disqualifications specified in section 9;

(b) is convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude which, in the opinion of the Provincial Government, unfits him to hold office;

* * * * *

(c) refuses to act or becomes incapable of acting or acts in a manner which the Provincial Government considers, after hearing any explanation that he may offer, to be prejudicial to the interest of wakfs;

- * * * * *
- (ii) any member who, without reasonable cause, fails during a continuous period of twelve months to attend any meeting of

CHAPTER III.

MEETINGS OF THE MAJLIS AND PROCEDURE AT MEETINGS.

Ordinary
meetings of
the Majlis.

14. (1) The Majlis shall have an office at Delhi and shall meet for the transaction of business at least once in every three months and as often as it is necessary to meet for the transaction of business.

(2) Every meeting of the Majlis shall be convened by the Sadr or by the Nazir under the direction of the Sadr and at least fourteen days notice of the meeting shall be given to the members.

(3) If there be no official business to be transacted at any quarterly meeting and if no notice of any business to be transacted at such meeting is received by the Sadr from any member at least ten days before the date appointed for the meeting, the Sadr shall, instead of calling the meeting, notify the fact to each member at least one week before the said date.

Special
meetings.

15. A special meeting of the Majlis shall be called by the Sadr on the receipt of a requisition signed in the

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.....
.....

called by the members who signed the requisition

Quorum at
meeting.

16. (1) Five members shall form the quorum for a meeting of the Sunni Majlis e Awwal, Delhi and three members shall form a quorum for a meeting of the Shia Majlis e Awwal, Delhi.

(2) If, at the time appointed for a meeting or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned. The Sadr shall fix a date for the adjourned meeting and fourteen days notice of such date shall be given to each member. * *

Sadr to preside
at meeting

17. The Sadr shall preside at every meeting of the Majlis and in his absence the members present shall elect one of their number to preside at the meeting.

Decision to be
by majority
of votes.

18. (1) * * * Every matter coming before the Majlis shall be decided by a majority of votes of the members present and voting in the meeting.

(2) In the case of an equality of votes, the Sadr shall have a second or casting vote

* * * * *

19. (1) Minutes of proceedings of all meetings of the ^{Minutes of} Majlis shall be entered in a book to be kept for the ^{proceedings} purpose and shall be signed by the Sadr

(2) A copy of the minutes of the proceedings of every meeting shall be forthwith forwarded by the Sadr to the Provincial Government or to such authority as the Provincial Government may direct

20 (1) The Majlis may appoint committees to assist ^{Appointment} it in the exercise of the powers or the performance of ^{of committees} the duties conferred or imposed upon it by or under this ^{and functions} Act, and may determine the functions and procedure of ^{of such} such committees ^{committees.}

(2) Any person who is not a member of the Majlis may be appointed to be a member of any such committee

Provided that the number of such persons on any such committee shall not exceed one third of the total number of members of the committee

CHAPTER IV

NAZIR E AWKAF AND OTHER OFFICERS AND SERVANTS OF THE MAJLIS

21 The Majlis may * * * appoint a person to ^{Appointment} be Nazir e Awkaf ^{of Nazir}

Provided that the first Nazir, who shall hold office for four years only, but shall be eligible for re appointment, shall be appointed by the Provincial Government * *

22. (1) No person shall as Nazir unless he is in the Awkaf a Sunni Muslim or Majlis e Awkaf a Shia Muslim

(2) The salary, allowances and other conditions of service of the Nazir of the Sunni Majlis e Awkaf shall be such as may be fixed by the Majlis * * *

Provided that the salary allowances and other conditions of service of the first Nazir shall be such as may be fixed by the Provincial Government * *

(3) The Nazir of the Shia Majlis e Awkaf shall be an unpaid officer

them by the Majlis * * *

CHAPTER III.

MEETINGS OF THE MAJLIS AND PROCEDURE AT MEETINGS.

Ordinary
meetings of
the Majlis.

14. (1) The Majlis shall have an office at Delhi and shall meet for the transaction of business at least once in every three months and as often as it is necessary to meet for the transaction of business

(2) Every meeting of the Majlis shall be convened by the Sadr or by the Nazir under the direction of the Sadr and at least fourteen days notice of the meeting shall be given to the members:

(3) If there be no official business to be transacted
the Sadr
the date
instead of
member at

Special
meetings

15. A special meeting of the Majlis shall be called by the Sadr on the receipt of a requisition signed in the

.....

to issue notices convening a meeting before the expiry

Quorum at
meeting.

16. (1) Five members shall form the quorum for a

.....

.....

(2) If, at the time appointed for a meeting or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned. The Sadr shall fix a date for the adjourned meeting and fourteen days notice of such date shall be given to each member * * *

Sadr to preside
at meeting

17. The Sadr shall preside at every meeting of the Majlis and in his absence the members present shall elect one of their number to preside at the meeting

Decision to be
by majority
of votes.

18. (1) * * * Every matter coming before the Majlis shall be decided by a majority of votes of the members present and voting in the meeting

* * * * *

(2) In the case of an equality of votes, the Sadr shall have a second or casting vote

* * * * *

(3) Without prejudice to the generality of the provisions of sub section (1), and subject to the other provisions of this Act, the powers and duties of the Majlis shall be—

- (a) to prepare and maintain in the prescribed manner a complete record containing full information relating to the origin, nature, extent, income (if any), objects and beneficiaries of the different classes of wakfs in the Province of Delhi,
- (b) to prepare and maintain a register containing true copies of all documents creating any wakf,
- (c) to prepare and settle its budget and to furnish a copy thereof to the Provincial Government or to such authority as the Provincial Government may direct,
- (d) to take measures for the recovery of lost property of any wakf to which this Act applies
- (e) to cause inspection to be made of the property or the office of any wakf and, for that purpose, to authorize the Nazir or any of its members, officers or servants to enter such property or office,
- (f) from time to time, to call for information, reports, budgets, returns and other documents from mutawallis,
- (g) to give directions for the proper administration of a wakf in accordance with the law governing such wakf and the wishes of the wakif in so far as such wishes can be ascertained and are not repugnant to such law

* * * * *

- (h) to direct the deposit of wakf money in the hands of a mutawalli in any bank approved by the Provincial Government,
- (i) to sanction the conversion of any property of a wakf into property of a different nature, if the Majlis is satisfied that such conversion is for the advantage of the wakf,
- (j) subject to the general supervision of the Provincial Government to control and administer the Wakf Fund,
- (k) to keep true and regular accounts of its own receipts and disbursements and submit the same for audit,

(l) to furnish to the Provincial Government or to such officer as the Provincial Government may appoint in this behalf any statement report return or other document and any information which the Provincial Government or as the case may be such officer may require to be furnished

(m) to institute whenever it thinks fit an enquiry relating to the administration of a wakf

(n) to direct the mutawalli of a wakf to institute in a court of law within such time as may be fixed by the Majlis any suit or proceeding which he is entitled to institute in accordance with the law for the time being in force in respect of the wakf and on failure of the mutawalli to do so to institute such suit or proceeding itself

(o) to defend either on behalf of or in addition to the mutawalli in any suit or proceeding instituted with respect to a wakf or any matter connected therewith or in cases where there is no mutawalli or the succession to the office of mutawalli is disputed to defend any such suit or proceeding itself and

(p) to realise in the prescribed manner and subject to the prescribed conditions out of the income of any wakf the costs incurred by the Majlis in any suit or proceeding instituted by it under clause (n) or in defending any suit or proceeding under clause (o) in respect of such wakf

(4) Save as provided in sub section (2) where the supervision of a wakf is vested in any committee or association appointed by the wakif or by a competent Court or authority such committee or association shall continue to function under the general superintendence and control of the Majlis unless superseded by the Majlis under sub section (5)

(5) The Majlis may supersede any committee or association referred to in sub section (4) which in the opinion of the Majlis is not discharging its functions

in any Court

* * * * *

26 (1) When any object of a wakf has ceased to exist or has in the opinion of the Majlis, become impossible of achievement, the Majlis may, of its own motion or on the application of any Muslim, after issuing notice in the prescribed manner to the mutawalli of such wakf and to such other person as may appear to the Majlis to be interested therein and after making

Application wakf funds etc., where ob. has ceased to exist or become impossible of achievement.

of achievement) to which the funds, property or income of the wakf, or so much of such fund, property or income as was previously expended on or applied to the object which has ceased to exist or become impossible of achievement shall be applied

(2) The applicant or the mutawalli of, or any other person interested in such wakf may, within sixty days of any order passed under sub section (1), make an application for varying, modifying, but, subject to the decision of any such application final and binding upon the applicant and every person interested in the wakf

27 (1) The Majlis may enter into such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act

Power to contract and mode of execution of contract

(2) Every contract made on behalf of the Majlis, the value or amount of which exceeds one hundred rupees, shall be in writing and shall be signed by the Nazir, and shall be countersigned by the Sadr and be sealed with the common seal of the Majlis. Contracts the value or amount of which is one hundred rupees or less shall be in writing and shall be signed by the Nazir

(3) If any contract is executed on behalf of the Majlis otherwise than in conformity with the provisions of sub section (2) it shall be voidable at the option of the Majlis

28 (1) The Majlis may, of its own motion or on an application made to it in this behalf by two or more persons interested in any wakf,—

Power of Majlis to settle schemes for proper administration of wakfs

(a) settle a scheme for such wakf, after making such enquiry as it thinks fit and giving notice to the mutawalli of such wakf and to such other person as may appear to the Majlis to be interested therein,

(b) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stead

Provided that any scheme so settled modified or substituted shall be in accordance with the law governing the wakf and shall not be contrary to the wishes of the wakf so far as such wishes can be ascertained

(2) A scheme settled, modified or substituted instead of another scheme under this section shall, unless otherwise ordered by the District Judge on an application, if any, made under sub section (3) come into force on a day to be appointed by the Majlis in this behalf and shall be published in the official Gazette

(3) The mutawalli of, or any other person interested in, such wakf may, within six months from the date of the publication in the official Gazette of the scheme so settled, modified or substituted instead of another

tion the order of the Majlis under sub sections (1) and (2) shall be final and binding upon the mutawalli of the wakf and upon every other person interested in such wakf

(4) An order passed by the District Judge on any application made under sub section (3) shall be final

Power of
Majlis to make
certain pay-
ments on
behalf of
wakfs

29 (1) Where a mutawalli refuses to pay or fails to pay any land revenue cess rent rates or taxes due to the Crown or to a local authority from a wakf, the Majlis may itself defray the charges from the Wakf Fund and may recover from the wakf property the amount so paid and if the refusal or failure of the mutawalli was in the opinion of the Majlis wilful, may recover from the mutawalli damages at the rate of twelve and one half per cent of the amount so paid

Provided that a mutawalli aggrieved by a decision of the Majlis to recover damages under this sub section may apply to the District Judge to have the order annulled and the order of the District Judge shall be final.

(2) The Majlis may pay out of the Wakf Fund land-revenue cess, rent, rates or taxes due to the Crown or to a local authority from a wakf if the funds of the wakf are insufficient to defray such charges

(3) The procedure provided in sub section (4) of section 54 shall apply to the recovery by the Majlis of any sums which the Majlis is empowered by sub section (1) to recover from a wakf or a mutawalli

Power of
Majlis to
borrow money

30 The Majlis may, with the previous sanction of the Provincial Government

may determine

31 (1) The Sunni Majlis-e Awwal for Sunni wakfs and the Shia Majlis-e Awwal for Shia wakfs shall prepare and maintain in such form as it thinks fit a register of all wakfs in the Province

Majlis to keep certain registers.

(2) Entries in the register may be made by the Majlis of its own motion or on application made by any Muslim after such enquiry as the Majlis thinks fit

(3) Any Muslim may, on payment of such fee as may be fixed by the Majlis inspect the register and obtain a copy of any extract thereof

32 If any necessity arises for immediate action by the Majlis and a meeting of the Majlis cannot be arranged in time to take such action the Sadr may exercise any power that could be exercised by the Majlis but the Sadr shall report in writing any action taken by him under this section to the Majlis at its next meeting together with his reasons for taking such action

Exercise by Sadr of powers of Majlis

CHAPTER VI

JUDICIAL PROCEEDINGS

33 In any of the following cases, namely,—

- (a) where any question arises as to whether any property is or is not property belonging to a wakf
 - (b) where a charge exists on any property for the performance of any religious pious or charitable act recognised as such by Muslim Law and there is failure to perform such act
 - (c) where any question arises as to whether a wakf is created primarily for Shias or for Sunnis
- the Majlis may apply to the District Judge for an order—

Powers of Majlis to make applications to the District Judge in certain cases

- (i) determining, in the case referred to in clause (a) whether the property does or does not belong to a wakf and, if it belongs to a wakf, the wakf to which it belongs
- (ii) directing, in the case referred to in clause (b) the person in possession of the property to perform such act or in default to pay to the Majlis the amount necessary for the performance by the Majlis or any person appointed by the Majlis in this behalf of the act for the performance of which the charge was created,
- (iii) determining, in the case referred to in clause (c) whether the wakf is created primarily for Shias or for Sunnis

Procedure at
hearing of
applications
for
determining
whether any
property is
wakf property

34 (1) When an application is made under clause (a) of section 33, the District Judge shall cause a special

such person and all other persons having any claim to the property to file their respective claims before him within six months from the publication of the said general notice

(2) If, within the period specified in sub section (1),—

(a) no claim is filed by any of the persons referred to in the said sub section, the District Judge shall make an order declaring that such property is wakf property and determining the wakf to which it belongs,

(b) any claim is filed by any such person, the District Judge shall proceed to determine whether the property is wakf property and, if it is, the wakf to which it belongs

(3) If the District Judge makes an order under clause

in possession of the property to deliver possession thereof within a period to be specified in the order to the mutawalli of the wakf concerned

IX of 1902.

on which the application referred to in sub section (1) is made to the District Judge

(5) In disposing of any application under this section to which clause (b) of sub section (2) applies the District Judge shall follow as nearly as possible the procedure applicable to the trial of suits

Application
to compel
mutawalli to
discharge
obligations
on the
appointment
of receiver

35 Where the mutawalli of a wakf wilfully fails to discharge any of the duties imposed upon him under the wakf, the Majlis or, with the previous sanction of the Majlis or the Provincial Government, any person interested in the wakf may make an application to the District Judge for an order—

(a) directing the mutawalli to discharge such obligation within a time to be specified in the order, or

specified

of the wakf, or

- (ii) persistently defaults in the payment of any amount payable under any law for the time being in force in respect of the property or income of the wakf or any other statutory charge on such property or income, or
- (iii) persistently defaults in the payment of any sum payable to any beneficiary under the wakf or in discharging any other duty imposed upon him under the wakf, or
- (iv) is guilty of breach of trust,

- (a)
- (b)
- (c)
- (d)
- (e) as the

(2) The *Majlis* or, with the previous sanction of the *Majlis* or of the Provincial Government, any person interested in the wakf may make an application to the District Judge for an order removing the mutawalli from any wakf, if such mutawalli—

- (a) is convicted of any such offence or is subjected by a criminal Court to any such order as implies moral turpitude which in the opinion of the District Judge unfits him to hold office,
- (b) refuses to act or becomes incapable of acting,
- (c) applies for being adjudged or is adjudged an insolvent,
- (d) fails without reasonable cause, the burden of proving which shall be upon him, to comply with any direction given under clause (h) or clause (n) of sub section (3) of section 25, or with the provisions of sub section (1) of section 41 or of sub section (1) of section 42, or
- (e) persistently and wilfully fails without reasonable cause to comply with the provisions of section 43 or to furnish any statement, annual account, estimate explanation or other document or information relating to the wakf of which he is the mutawalli which he is required or called upon to furnish under any provision of this Act

Notice of certain suits to be given to the Majlis and addition of Majlis as party thereto

37 (1) In every suit or proceeding * * * in respect of any wakf or property belonging to a wakf * * * the Court shall issue a notice of the institution thereof to the Majlis

(2) The Majlis may apply to the Court in which the suit or proceeding referred to in sub section (1) is pending, to be added, and shall thereupon be added, as a party thereto, and shall be entitled to conduct such suit or proceeding, if instituted by the mutawalli, or to defend such suit or proceeding, if instituted by any other person against the mutawalli

(3) If the notice required by sub section (1) to be issued to the Majlis in respect of any suit or proceeding is not issued, the decree or order passed in such suit or proceeding shall be voidable at the option of the Majlis

Power of Majlis to institute suits on failure of mutawalli to do so

38 Where there is no mutawalli of a wakf or the mutawalli of a wakf refuses or neglects to act in the matter within a reasonable time the Majlis may in its own name institute a suit or proceeding in Court against a stranger to the wakf or any other person for the recovery of any wakf property wrongfully possessed alienated or leased or to have any wakf property discharged of an encumbrance or obligation wrongfully created or to recover any money belonging to a wakf

Approval of Majlis required to compromise etc

39 No arrangement compromise or adjustment in any suit or proceeding * * * in respect of any wakf or property belonging to a wakf shall be recorded under the provisions of Rule 3 of Order XXIII of the Code of Civil Procedure 1908, without the approval of the Majlis V of 1903.

CHAPTER VII

MUTAWALLIS AND THEIR DUTIES

Mutawalli to carry out orders of the Majlis.

40 Every mutawalli shall carry out all directions which may, from time to time, be issued to him by the Majlis under any of the provisions of this Act

Registration of wakfs

41 (1) (a) Within six months from the date of the publication of the notification establishing the first Majlis the mutawalli of every wakf existing on the said date shall furnish to the Majlis a statement in the prescribed form containing the prescribed particulars in respect of the wakf of which he is the mutawalli

(b) In the case of a wakf created after the date of the publication of the said notification, such statement shall be furnished to the Majlis by the mutawalli of such wakf within six months from the date on which the wakf is created

V, C 1909

(2) Every such statement shall be verified by the mutawalli in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings, and shall be accompanied by a true copy of the deed or instrument creating the wakf or, where there is no such deed or instrument, by a statement in the prescribed form setting forth the objects of the wakf and verified in like manner.

42 (1) The mutawalli of every wakf shall before the fifteenth day of January in each year, prepare a budget of the estimated income and expenditure of such wakf for the next succeeding financial year and shall forthwith send a copy thereof to the Majlis.

Budget of wakfs and submission of such budgets to the Majlis.

(2) The Majlis may, within six weeks from the date on which it receives such copy, alter or modify the budget in such manner and to such extent as it thinks fit.

Provided that nothing in this sub section shall be deemed to authorise the Majlis to alter or modify the budget unless it is inconsistent with the wishes of the wakif, so far as such wishes can be ascertained.

(3) If the Majlis alters or modifies any budget under sub section (2), it shall forthwith send a copy of the budget as so altered or modified to the mutawalli of the wakf concerned, and the budget as so altered or modified shall be deemed to be the budget of the wakf.

(4) If the Majlis neglects or omits for two weeks after the expiration of the period mentioned in sub section (2) to send to the mutawalli of the wakf concerned a copy of the budget altered or modified as aforesaid, the Majlis shall be deemed to have approved the budget without any alteration or modification.

(5) If the mutawalli fails to prepare and send a copy of the budget as required by sub section (1) the Majlis shall prepare a budget for the wakf concerned and said budget shall be deemed to be the budget of that wakf to the year in question.

43 The mutawalli of every wakf shall offer every reasonable facility for the inspection of the documents and the property of such wakf and shall render every assistance in enquiries when called upon to do so by the Majlis any committee the Sadr the Nazir or any other person or officer appointed by the Majlis to make such enquiries.

Duties of mutawallis to give assistance in enquiries etc.

44 (1) When the District Judge makes any order appointing a new mutawalli under clause (b) of sub section (1) of section 36 or vesting any property in a mutawalli under clause (c) of the said sub section the Majlis shall order the mutawalli removed from office or any person who may be

Mutawalli or other person to deliver possession of wakf property etc in certain cases as ordered by the Majlis.

in possession of any property or document belonging to the wakf concerned or in possession of any property to which the order under the said clause (c) relates to deliver, within such time as may be fixed by the Majlis, such property or document to the new mutawalli or to the mutawalli in whose favour the order under the said clause (c) has been made and thereupon the mutawalli who has been so removed from office or the other person so ordered shall be bound to deliver such property or document as directed by the Majlis

(2) If any person ordered under subsection (1) to deliver any property or document of a wakf fails to do so within the time fixed by the Majlis the Majlis may make an application to the District Judge for the recovery of such property or document

CHAPTER VIII

AUDIT AND RECOVERY OF IRREGULAR EXPENSES

Appointment of auditor and audit of accounts of the Majlis.

45 (1) The accounts of the Majlis shall be audited and examined every year by such auditor as may from time to time be appointed by the Provincial Government

(2) For the purposes of any such audit and examination of accounts the auditor may by a demand in writing require from the Majlis or any member or servant of the Majlis the production before him of any document and papers which he deems necessary and may require any person holding or accountable for any such books deeds vouchers documents or papers to appear before him at any such audit and examination and to answer all questions which may be put to him with respect to the same or to prepare and submit any further statement which such auditor may consider necessary

Submission of auditor's report to the Majlis and the Provincial Government.

46 (1) Within thirty days after the audit and examination have been completed the auditor shall submit a report to the Majlis upon each account audited and examined and shall forward copies of his reports to the Provincial Government and to the Majlis

(2) The report of the auditor shall among other matters specify all items of expenditure which in his opinion are illegal irregular or improper all cases of failure to recover money or property due to the Majlis, all instances of loss or wasteful expenditure of money or property due to negligence or misconduct and all instances in which any money or property has been devoted to any purpose not authorised by this Act

(3) The Majlis shall cause the report and abstracts of each account to be published in at least one English and one Urdu newspaper printed and published in the Province of Delhi

47 The Majlis in general meeting shall consider ^{Majlis in general meeting} the reports of the auditor and satisfy itself that no expenditure shown therein has been incurred other ^{shall be} wise than in accordance with the provisions of this Act and shall pass such orders as are in its opinion necessary and proper to rectify any illegal unauthorised or improper expenditure and may pass such further orders upon the reports as it deems proper ^{shall be}

48 (1) The expenses incurred in the audit and ^{Payment of} examination of the accounts of the Majlis shall be ^{signature} paid out of the Wakf Fund

(2) If payment of the expenses referred to in sub-section (1) is not made within three months from the date of the submission of a report as described in section 46, the Provincial Government may, on application to it being made within six months from such date by the auditor, recover the amount due as if it were an arrear of land revenue

49 (1) The accounts of every wakf shall be audited ^{Audit of} and examined annually by a qualified accountant ^{signature} appointed as auditor by the Majlis ^{Wakfs}

(2) The auditor may, by written notice, require the production before him of any document or the attendance before him of any person responsible for the preparation of the accounts, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of audit

(3) After completing the audit, the auditor shall submit a report to the Majlis

Provided that the auditor may submit an interim report at any time he thinks fit

(4) The report of the auditor shall include a statement of—

- (a) any payment which appears to him to be contrary to law,
- (b) the amount of any deficiency or loss which appears to have been incurred by the negligence or misconduct of the mutawalli and
- (c) the amount of any sum which ought to have been but is not brought into account by the mutawalli

(5) After considering such report the Majlis may—

- (a) order that any payment referred to in clause (a) of sub-section (4) shall be allowed or that no further action shall be taken as regards any amount referred to in clause (b) or (c) of the said sub-section, or

(b) serve a notice on the mutawalli concerned requiring him to show cause within one month from the date of the service of such notice why such payment should not be surcharged or such amount should not be charged against him

(6) After considering such cause as may be shown by the mutawalli, the Majlis shall pay again to the mutawalli the amount due from him

(7) The cost of the audit of the accounts of a wakf shall be paid from the Wakf Fund

Certified amount recoverable as arrears of land revenue

50 (1) Every amount certified under sub section (6) of section 49 as due from any mutawalli shall, if not paid within sixty days next after the date of the certification thereof, be recoverable in the manner provided in sub section (1) of section 54

(2) The Majlis shall pay all certified amounts received or recovered by it to the mutawalli of the wakf concerned

Appeal against order of surcharge or charge

51 (1) A mutawalli aggrieved by any order of surcharge or charge made under sub section (6) of section 49 may appeal to the Provincial Government within sixty days of such order, which may, after proper, pass such order

(2) Notwithstanding anything to the contrary contained in sub section (1) of section 50 pending the disposal of such appeal all proceedings on the certificate shall be stayed

Special provisions as to audit in the case of the Shia Majlis and other wakfs

52 The provisions of this Chapter shall not apply to the Shia Majlis e Awwal or to Shia wakfs but the Provincial Government may at any time order the accounts of the Shia Majlis e Awwal to be audited and the expenses incurred in such audit shall be payable in such manner as the Provincial Government may direct, and the Shia Majlis e Awwal shall have the accounts of every Shia wakf examined annually by two persons appointed for the purpose by the Majlis

CHAPTER IX

THE WAKF FUND

Creation of Wakf Fund

53 (1) There shall be formed a fund to be called the Wakf Fund, and there shall be placed to the credit thereof—

(a) all sums received by the Majlis as donations and grants,

(b) all sums received as fee under section 54

- (c) all receipts in respect of fees for inspection and supplying copies of any documents ;
- (d) all sums received or recovered by the Majlis as costs awarded to the Majlis in any suit or proceeding, and
- (e) all sums received or recovered by the Majlis on any other account except certified sums received or recovered by it under section 50

(2) The Wakf Fund shall be vested in the Majlis and the balances standing to the credit of the Fund shall be kept in such custody as the Provincial Government may, from time to time direct

54 (1) For the purpose of defraying the expenses incurred or to be incurred in the administration of this Act, the mutawalli of every wakf other than a wakf referred to in section 3 of the Mussulman Wakf Validating Act, 1913, or a wakf the annual income of which is less than five hundred rupees shall in each financial year pay to the Majlis such fee, not exceeding six and a quarter per centum of its net income in the last preceding financial year, as the Majlis may, from time to time, with the previous sanction of the Provincial Government determine

Fee payable
by wakfs to
the Wakf
Fund

Explanation—In this sub section the expression "net income" means the total income realised by the mutawalli from all sources after deducting any amount payable as revenue, rent taxes * local or other cesses

(2) (a) The fee referred to in sub section (1) shall be assessed by the prescribed authority in the prescribed manner

order, appeal to such authority as may be prescribed, and such authority may, by order set aside or vary such assessment and such order shall be final

(4) If any instalment of such fee is not paid on or before the date fixed by the Majlis under sub section (3) for the payment of such instalment, the Majlis may forward to the Collector a statement specifying the amount due and the Collector on receipt of such statement shall proceed to recover from the person responsible for paying the same the amount specified in the statement as if it were an arrear of land revenue

(5) The Majlis may reduce any portion of the fee payable by the mutawalli of any wakf

Objects to which Wakf Fund may be applied.

55 The Wakf Fund shall be applicable to the following objects and in the following order—

- (a) to the repayment of debts incurred by the Majlis for the purposes of this Act,
- (b) to the payment of the salaries and allowances of * * the Nazir and of the establishments employed by the Majlis for the purposes of this Act

* * *

(c) to the expenses incurred in the assessment and recovery of the fee mentioned in section 54,

(d) to the payment of the cost of audit of the Wakf Fund and of the cost of audit of the accounts of any wakf made under section 49,

(e) to the expenses of any suit or proceeding to which the Majlis is a party,

(f) to any object which may be declared by the Majlis at a meeting specially convened for the purpose by a resolution in favour of which not less than two-thirds of the members present at such meeting shall have voted to be an object to which the Wakf Fund may be applicable in consonance with the Muhammadan Law *

(g) to payments for the maintenance or repair of wakfs whose income is insufficient for the purpose

(h) to payments of arrears of land revenue cess rate or taxes due to the Crown or a local authority from a wakf where the mutawalli refuses or fails to pay and

(i) to the payment of any other expense incurred by the Majlis in carrying out the provisions of this Act.

CHAPTER V MISCELLANEOUS

As to transfer of immovable property of wakf.

56 (1) Except as provided in sub-section (2) no transfer made after the commencement of this Act by a mutawalli of any immovable property of a wakf by way of sale mortgage gift or exchange or by way of lease for a term exceeding three years shall be valid unless made with the previous sanction of the Majlis

(2) Where any such transfer is made under an express power conferred by the wakf deed the previous sanction of the Majlis shall not be necessary but a notice of the proposed transfer in such form and containing such particulars as may be prescribed shall be sent by the mutawalli to the Majlis one month before the transfer is made

57. The mutawalli of a wakf may apply by petition to the Majlis for the opinion, advice or direction of the Majlis on any question affecting the management or administration of the property of such wakf and the Majlis shall give its opinion, advice or direction as the case may be, thereon

Power of mutawalli to apply to Majlis for direction.

58. Every order passed by the District Judge under this Act shall have the force of a decree and shall unless otherwise provided in this Act be appealable to the High Court

Orders of District Judge to have the force of and be appealable as decrees

59. The Sadr, the Nazir and every auditor appointed under section 45 or 49 * * * shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code

Sadr etc., to be public servants.

60. The Majlis may, if it is satisfied that there is sufficient reason for so doing from time to time extend the time within which any act or thing is required or ordered to be done * * * under any of the provisions of this Act

Power to extend time.

61. (1) The Majlis may grant copies of its proceedings and records and any other document in its possession on payment of such fees and subject to such condition as may, from time to time, be determined by the Majlis

Power to grant copies and certify such copies.

(2) Such copies may be certified in the manner provided in section 76 of the Indian Evidence Act, 1872

62. (1) No act of the Majlis or of a committee shall be deemed to be invalid by reason of the existence of a vacancy in the Majlis or such committee

Presumption and savings

(2) Accidental omission to serve notice of a meeting of the Majlis or of a committee on any member of the Majlis or such committee, as the case may be, shall not affect the validity of any such meeting

(3) No act, order or direction of the Majlis shall be deemed to be invalid by reason of any irregularity in the constitution of the Majlis and no order or decision or direction of the Majlis or of the Sadr shall be reversed or substantially varied, nor shall any proceeding heard by the Majlis or by the Sadr be remanded by the District Judge before whom, or any Court in which, an application is made, a suit instituted or an appeal preferred to reverse or vary such order, decision or direction, on account of any misjoinder or non joinder of parties or causes of action or any error, defect or irregularity in the proceedings before the Majlis or the Sadr not affecting the merits of the case or the jurisdiction of the Majlis or the Sadr

XLV of 1860.

I of 1872

Bar of suits

63 Save as otherwise provided in this Act, no suit shall be brought in any Civil Court to set aside or modify any order made under this Act, and no suit shall be against the Majlis the Sadr or any other member or the Nazir for anything in good faith done or purporting to be done under this Act.

No action to be brought against the Majlis or the Sadr or any other member or the Nazir or any of the officers or servants of the Majlis or any person acting under their direction or under the direction of any of them for any thing done or purporting to be done under this Act until the expiration of two months next after notice in writing has been delivered or left at the office of the Majlis and also (if the suit is intended to be brought against the Sadr or any other member or the Nazir or any of the officers or the servants of the Majlis or any person acting under their direction or under the direction of any of them) at the place of abode of the person against whom such suit is intended to be brought stating the cause of action and the name and place of abode of the person who intend to bring the suit.

64 * No suit shall be brought against the Majlis or the Sadr or any other member or the Nazir or any of the officers or servants of the Majlis or any person acting under their direction or under the direction of any of them for any thing done or purporting to be done under this Act until the expiration of two months next after notice in writing has been delivered or left at the office of the Majlis and also (if the suit is intended to be brought against the Sadr or any other member or the Nazir or any of the officers or the servants of the Majlis or any person acting under their direction or under the direction of any of them) at the place of abode of the person against whom such suit is intended to be brought stating the cause of action and the name and place of abode of the person who intend to bring the suit.

* * * * *

Court-fee payable under this Act.

65 Notwithstanding anything contained in the Court-fee Act 1900 or any other Act in its application in the Province of Delhi, the fee payable on any application filed before the District Judge under this Act shall be such as may be prescribed.

Provisions to have effect notwithstanding any other law.

66 The provisions of this Act shall have effect notwithstanding anything contained in any other law or anything having the force of law and anything in any such law or anything having the force of law, which is inconsistent with any of the provisions of this Act, shall to the extent of such inconsistency be deemed to be of no effect.

Power of the Provincial Government to make rules.

67 (1) The Provincial Government may after previous publication, make rules not inconsistent with this Act, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Provincial Government may make rules with respect to all or any of the following matters—

- (a) the conditions and restrictions subject to which the Majlis may transfer any property under sub-section (2) of section 5,
- (b) the manner in which members shall be elected under clauses (b) (c) (d) and (e) of sub-section (1) and clauses (1) (c) and (1) of sub-section (2) of section 6, and under section 10,

* * * * *

- (c) the manner in which the record referred to in clause (a) of sub section (3) of section 25 shall be prepared and maintained,
- (d) the manner in which and the conditions subject to which the Majlis may realise the costs referred to in clause (p) of sub section (3) of section 25,
- (e) the manner in which notices under sub section (1) of section 26 shall be issued,
- (f) the manner in which general notices under sub section (1) of section 34 shall be published
- (g) the form of the statements referred to in sub sections (1) and (2) of section 41 and the particulars to be contained in the statement referred to in the said sub section (1)
- (h) the authority to whom a mutawalli may appeal under sub section (1) of section 51
- (i) the manner in which fees under section 54 shall be assessed and paid the authority by whom such assessment shall be made and the authority to whom appeal from orders of assessment shall lie, *
- (j) the form of and the particulars to be contained in the notice referred to in sub section (2) of section 56 and
- (k) the fee payable on any application or other document under section 65

68 (1) The Majlis may make bye laws not inconsis

Power of the
Majlis to
make bye-
laws

(2) In particular and without prejudice to the generality of the foregoing power the Majlis may make bye laws with respect to—

- (a) _____
- (b) _____
- (c) the fee to be levied on applications under this Act before it or any of its committees or before the Sadr or the Nazir or any of the officers or servants of the Majlis and on applications for copies of proceedings or other records of the Majlis and the form of and manner of making such applications
- (d) the fee to be paid for inspecting the register of wakfs
- (e) the form of the register of wakfs to be prepared and maintained by the Majlis,
- (f) the books and accounts to be kept in the office of wakfs,

(g) the accounts reports and returns to be sub

(h)

such audit, the forms and contents of the auditor's reports and the scale of remuneration to be paid to auditors,

(i) the custody and investment of the fund of any wakf,

(j) the number, designation, grades salaries, allowances and other conditions of service, including the powers and duties, of the officers and servants of the Majlis,

(k) the allocation of duties to the Sadr and members of the Majlis,

(l) the security, if any, to be furnished by officers and servants of the Majlis,

(m) the persons by whom receipts may be granted for money received

(n) the custody of the common seal,

(o) the manner in which the decisions of the Majlis may be ascertained otherwise than at meetings,

(p) the form of and particulars to be contained in the budget referred to in section 42, and

(q) the publication of the notices, decisions and orders of the Majlis, *

* * * * *

(3) Such bye laws shall be made after previous publication and shall not take effect until they are approved and confirmed by the Provincial Government

Provisions to
facilitate the
bringing into
force of this
Act.

69 (1) Notwithstanding anything contained in section 22 of the General Clauses Act 1897, but other-
wise without
the Province
the passing
to in the p
appointment shall take effect immediately

(2) It shall be the duty of the Nazir when so appointed to carry out or assist in carrying out under the directions and control of the Provincial Government any steps necessary for or preliminary to the bringing into force of the provisions of this Act

(3) If any difficulty arises in the first constitution of the Majlis or otherwise in bringing this Act into force the Provincial Government may by order direct any action necessary to overcome such difficulty

M N KAUL,
Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 11th February, 1913 —

L A Bill No 1 OF 1913

1 Bill further to amend the Indian Penal Code

WHEREAS it is expedient further to amend the
XLV of 1860. Indian Penal Code, for the purpose hereinafter appearing,

It is hereby enacted as follows —

1 This Act may be called the Indian Penal Code Short title
(Amendment) Act 1913

XLV of 1860. 2 For section 299 of the Indian Penal Code (here Amendment of section 299, Act XLV of 1860
inafter referred to as the said Code) and *Illustrations* (a) and (b) to that section the following shall be substituted, namely —

'Whoever causes death by voluntarily doing an act with the knowledge that he is likely by such an act to cause death commits the offence of culpable homicide

Illustrations

(a) A assaults and strikes B with a knife in the leg or some other non vital part of the body Death results A has committed the offence of culpable homicide because he knows that he is likely to cause death by striking a person with a knife

(b) A assaults and strikes B with a lathi or other blunt weapon on a non vital part of the body Death results A has not committed culpable homicide because death is not likely to result from such a blow He has committed an offence of simple or grievous hurt

3 After section 299 of the said Code the following section shall be inserted namely —

Insertion of a new section 299-A in Act XLV of 1860

299A Whoever commits culpable homicide shall be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both

Punishment for culpable homicide

4 (a) In section 300 of the said Code the words 'culpable homicide is murder' wherever they occur should be substituted by the words 'culpable homicide amounting to murder' Amendment of section 300, Act XLV of 1860

(b) In the *Exceptions* to section 300 of the said Code the words 'Culpable homicide is not murder

wherever they occur should be substituted by the words culpable homicide does not amount to murder

Amendment of Act on 30th of Act XLV of 1860 5 In section 302 of the said Code for the word murder the word culpable homicide amounting to murder shall be substituted

Amendment of Act on 30th of Act XLV of 1860 6 In section 303 of the said Code for the word murder the word culpable homicide amounting to murder shall be substituted

Amendment of Act on 30th of Act XLV of 1860 7 In section 304 of the said Code the paragraph beginning with the word or with imprisonment of either description and ending with the words injury as is likely to cause death shall be omitted

Amendment of Act on 30th of Act XLV of 1860 8 In section 307 of the said Code for the word murder the words culpable homicide amounting to murder shall be substituted

STATEMENT OF OBJECTS AND REASONS.

Section 299 I.P.C. was originally intended to define all offences which resulted in voluntary causing of death. No sentence was attached to it.

The words with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death are reproduced and explained and amplified in section 300 as firstly secondly and thirdly. Fourthly was intended to be equivalent in murder cases to the words 'with the knowledge that he is likely by such act to cause death' in section 299.

But there is a difference between fourthly in Section 300 and the above words in Section 299 whereas here is no difference between the words with the intention etc. in section 299 already quoted and firstly secondly and thirdly in section 300.

There is no difference between murder and culpable homicide not amounting to murder except for the protection afforded to the accused by the *Exceptions* to section 300.

A difficulty then arose was there any offence of culpable homicide and if so what was its punishment? A punishment was attached to it under section 304 second part. This meant that section 299 ceased to be a definition of all offences resulting in voluntary causing of death and became the definition of culpable homicide only. Consequently the first part of section 299 with the intention etc. became not only redundant but confusing and the Illustrations (a) and (b) have turned to be still more confusing because they are clear illustration of murder and there is no illustration of culpable homicide as distinguished from murder due to this error is on. It is not properly understood by Sessions Courts that there are three offences of voluntary causing of death (1) Culpable Homicide (2) Culpable Homicide not amounting to murder and (3) murder. To clarify this position it is suggested that the definition of culpable homicide shall be amended as follows —

Whoever causes death by voluntarily doing an act with the knowledge that he is likely by such act to cause death commits the offence of culpable

homicide ' To this should be added section 209A 'Whoever commits culpable homicide shall be punished with imprisonment of either description for a term which may extend to 10 years or with fine or with both' i.e. the 2nd part of section 304 The illustrations (a) and (b) to section 299 be deleted as they are illustrations of murder and in its place other illustrations given as are mentioned in the Bill Changes suggested in other sections are merely consequential Apart from the importance of clarifying the definitions of these three offences, injustice and waste of time arise at present because an accused is entitled to be defended by counsel if he is charged with murder and it is not always easy to obtain experienced counsel when the Sessions Judge amends a charge from culpable homicide or culpable homicide not amounting to murder to a charge of murder and this is frequently done It is to remove this confusion and consequent difficulties in the trial of cases that this Bill is introduced

ALLAHABAD,

The 5th January 1913

MUHAMMAD AHMAD KAZMI

M N KAUL,
Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 11th February, 1943 —

L A BILL No 5 of 1943

*A Bill further to amend the Code of Criminal
Procedure, 1898*

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898 for the purpose hereinafter appearing,

It is hereby enacted as follows —

Short title
and
commence-
ment.

1 (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1943

(2) It shall come into force at once

Amendment
of section
38 Act V
of 1898

2 To section 378 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code) the following proviso shall be added, namely —

‘ Provided that the case will not be so laid before another Judge, if the only difference of opinion between the Judges is about the giving of the benefit of doubt to the accused and the accused shall be acquitted ’

Amendment
of section
429 Act V
of 1898

3 To section 429 of the said Code the following proviso shall be added, namely —

‘ Provided that the case will not be so laid before another Judge, if the only difference of opinion between the Judges is about the giving of the benefit of doubt to the accused, and the accused shall be acquitted ’

STATEMENT OF OBJECTS AND REASONS.

The question of weighing evidence and coming to a definite conclusion on the basis of the evidence especially oral evidence is a difficult matter. No cut and dried principles can be laid down for the purpose. No definite standards can be prescribed and the only thing that we can lay down, can be that only such conclusions are to be accepted as appeal to a reasonable mind. In the administration of Criminal Law, it is a well established principle that benefit of doubt should be given to the accused. In practice when a case is tried by a Magistrate or a Judge or is heard in appeal and such a Magistrate or Judge feels that there is some reasonable doubt about the guilt of the accused he can give him the benefit of doubt. But a rather different position is provided by the present Code when the case is heard by a Bench of the High Court. It cannot be doubted that in respect of or and reason the Judges of the High Court are more careful than the other courts. Persons holding the comparatively less

posts of High Court Judges reach those places by a process of selection either from services or from legal profession which guarantees a high standard of legal knowledge common sense and reasonableness of mind. When two or more Judges hear an appeal they have got a further advantage of being in a position to have a free exchange of views amongst themselves—a privilege not enjoyed by Magistrates or Sessions Judges. So if a Judge with this backing and advantages entertains a doubt about the guilt of the accused we can unhesitatingly say that it is a reasonable doubt. It is for this purpose that I am moving this amendment. When one of the two High Court Judges hearing an appeal is of the opinion that the guilt of the accused has not been fully proved, then it must be considered to be a view worthy of consideration. Recently in a case the Honourable the Chief Justice of the Allahabad High Court observed

It is a fundamental principle underlying the administration of criminal justice that an accused person is entitled to the benefit of doubt as to his guilt. The doubt however, must be doubt of a reasonable mind. If a criminal case is being heard by a bench of two judges of His Majesty's Court of Justice and if one of the judges entertains doubt about the guilt of an accused person, I should think that there should be no escape from the conclusion that the doubt of the judge concerned is the doubt of a reasonable mind. I therefore consider that it is about time that the legislature should lay down that in the event of difference of opinion between a bench of two judges of High Court the opinion of the Judge acquitting the accused person must prevail and in such a case a reference to a third judge is unnecessary." (Mulla and others vs K E reported in *Leader* dated 3rd October, 1942). In an earlier case *Kazeem Thakoor and others vs K E* (10 *Southerlands Weekly reporters criminal* page 45) a full bench of five judges of the Allahabad High Court held that "where a difference of opinion arises between two judges of the High Court in a criminal appeal the opinion of a senior judge prevails under section 36 of the Letters Patent notwithstanding section 420 of the Code of Criminal Procedure."—That case of course was decided on the interpretation of a clause of the Letters Patent which no longer exists on the statute book but I refer to it only to show that a practice different from the present practice was at a time recognized by the statute and there is no harm likely to result if on the basis of recognised principles we change the present practice.

ALLAHABAD,

The 8th January 1943

MUHAMMAD AHMAD KAZMI

M N KAUL,

Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 11th February, 1943 —

L A BILL No 6 OF 1943

A Bill further to amend the Indian Merchant Shipping Act, 1923.

WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923, for a certain ~~XXI~~ ^{XXI of 1923} purpose,

It is hereby enacted as follows —

Short title
and com-
mencement

1 (1) This Act may be called the Indian Merchant Shipping (Amendment) Act, 1943

(2) It shall come into force at once

Amendment of
section 209A
Act XXI of
1923

2 In sub section (1) of section 209A of the Indian Merchant Shipping Act, 1923, after the words ~~XXI~~ ^{XXI of 1923} "together with a sum of one rupee for each day" the words "in respect of a deck pilgrim and a sum of three rupees for each day in respect of a cabin class pilgrim" shall be inserted

*The Governor General has been pleased to accord the previous sanction required under clause (a) of sub-section (2) of section 67 of the Government of India Act as saved from repeal by paragraph 12 of the Government of India (Commencement and Transitory Provisions) Order 1936 to the introduction of this Bill in the Legislative Assembly

STATEMENT OF OBJECTS AND REASONS.

If a pilgrim holding a return ticket is owing to his inability to obtain accommodation on a pilgrim ship detained at Jeddah for a longer period than 25 days the shipping company concerned is bound to pay under section 209A (1) of the Indian Merchant Shipping Act 1923, to the Central Government in respect of such pilgrim a sum of one rupee for each day after the expiry of 25 days. The time during which a pilgrim ship is prevented from sailing from Jeddah due to an outbreak of an infectious disease, war disturbance &c, is not taken into account in computing the period of 25 days. In actual practice the money due from the shipping company is realized by the British Legation, Jeddah and paid to the pilgrim concerned on the spot. A pilgrim travelling in a cabin usually pays more money in the shape of fare including the cost of food than that paid by a pilgrim who travels on a deck, but both get compensation at the same rate (i.e., one rupee per day) from the shipping company under the existing law. In view of the higher standard of living of the cabin class pilgrim the present rate of compensatory allowance is quite inadequate. It is proposed therefore to amend the aforesaid section so as to compensate him at an increased rate of Rs 3 per day. The rate proposed is moderate as compared with the high cost of living at Jeddah.

FAZL I HAQ PIRACHA

M N KAUL
Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 11th February, 1943 —

L A Bill No 7 of 1943

*1 Bill further to amend the Durgah Khwaja Saheb
Act 1936*

WHEREAS it is expedient further to amend the Durgah Khwaja Saheb Act, 1936, for the purpose hereinafter appearing,

It is hereby enacted as follows —

1 This Act may be called the Durgah Khwaja Saheb (Amendment) Act, 1943

2 In section 5 of the Durgah Khwaja Saheb Act, 1936 (hereinafter referred to as the said Act),—

(1) in sub section (1),—

(i) for the word "twenty five" the word "twenty two" shall be substituted,

(ii) for clause (d) the following shall be substituted, namely —

"(d) (i) one residing in Ajmere Merwara (other than a member of the Khadim community) elected by Muslim members of local bodies in Ajmere Merwara,

(ii) one elected by Muslim members of local bodies in the Province of Delhi',

(iii) for clause (g) the following shall be substituted, namely —

'(g) two Sajjadanashins of the Shrines of the Chishti order (one from the Nezami, and one from the Sabri groups) of Sufis co opted by the members of the committee referred to in clauses (a) to (f) in a meeting convened by the Chief Commissioner of Ajmere Merwara for the purpose'

(2) Sub section (2) shall be omitted and sub sections (3) and (4) shall be re numbered as sub sections (2) and (3) respectively

3 After section 5 of the said Act, the following shall be inserted as sections 6, 7 and 8 namely —

"6 The names of the members of the committee elected, nominated and co opted under clauses (a) to (g) of sub section (1) or nominated under sub section (3) of section 5 shall be published by the Chief Commissioner of Ajmere Merwara in the Gazette of India

Amendment of
section 5
Act XXIII
of 1936

Insertion of
sections 6, 7
and 8 in Act
XXIII of
1936

Publication of
the names of
members of
the Committee

XXIII of
1936.

XXIII of
1936

Disqualifica-
tion of
members

7 No person shall be qualified to be a member of the committee if—

- (a) he cannot read and write Urdu,
- (b) he has been convicted by a criminal court of any offence involving moral turpitude;
- (c) he is less than 25 years of age,
- (d) he is of unsound mind and stands so declared by a competent court,
- (e) he has, on any previous occasion been removed from office under section 8

Removal of
President and
members.

8 The Central Government may remove from office—

- (i) the President or any member, if the President or such member—
 - (a) is convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude, which, in the opinion of the Local Government, unfits him to hold office,
 - (b) is convicted of any offence under this Act,
 - (c) refuses to act or becomes incapable of acting or acts in a manner which the Local Government considers to be prejudicial to the interests of the Work,
 - (d) applies for being adjudged or is adjudged an insolvent or
 - (e) is in the opinion of the Local Government guilty of misconduct in the discharge of his duties,
- (ii) the President, if he fails without an excuse, which is in the opinion of the Local Government sufficient, to attend three consecutive meetings of the Committee,
- (iii) any member who without the permission of the President fails to attend six consecutive meetings of the Committee "

Amendment
of section 9
Act XXIII of
1936

4 In sub section (1) of section 9 of the said Act, for the words "their election nomination or co option" the following shall be substituted namely —

"publication of their names in the Gazette of India under section 6 and shall include any further period which may elapse between the expiration of the said five years and the date of the first meeting of the next succeeding Committee at which a quorum is present"

5 In section 10 of the said Act,—

Amendment
of section 10
Act XXIII of
1936

(a) in sub section (1), the words “ and a Vice-President ” shall be omitted,

(b) for sub section (2) the following shall be substituted, namely —

“(2) If the Committee fails to elect the President within sixty days from the date of the publication of the names of the members of the Committee in the Gazette of India under section 6, the Chief Commissioner of Ajmere Merwara may appoint as President one of the members of the Committee except those who are elected under clauses (a) to (c) of sub section (1) of section 5”, and

(c) in sub section (3), the words “ and Vice President ” shall be omitted

6 For section 14 of the said Act, the following shall be substituted, namely —

Amendment
of section 14
Act XXIII of
1936

“14 In the case of elections under clause (c) or sub clause (i) of clause (d) of sub section (1) of section 5, the Chief Commissioner of Ajmere Merwara in the case of election under sub clause (ii) of clause (d) of the said sub section, the Chief Commissioner of Delhi, and in the case of elections under clause (e) of the said sub section, the Presidents of both Chambers of the Legislature concerned, acting together, or the President of the Legislative Assembly concerned, as the case may be, may make rules to provide for—

Power to make
rules

(i) the procedure for such elections, and

(ii) the decision of election disputes’

7 To sub section (1) of section 15 of the said Act, the words “ subject to the approval of the Chief Commissioner of Ajmere Merwara ” shall be added in the end and the full stop in the end of the said sub section shall be converted into a comma

Amendment
of section 15
Act XXIII of
1936

8 To section 19 of the said Act, the following words shall be added at the end, namely —

Amendment
of section 19
Act XXIII of
1936

‘ provided it is not contrary to the terms of wakf deed or in absence of wakf deed against the wishes of the donor or wakif”, and the full stop in the end of the said section shall be converted into a comma

Amendment
of section 20
Act XXIII of
1936
Audit of
accounts

9 For section 20 of the said Act, the following shall be substituted, namely —

' 20 (1) The accounts of the Committee shall be audited and examined every year by such auditor as may from time to time be appointed by the Local Government

(2) For the purpose of any such audit and examination of accounts the auditor may, by a demand in writing, require from the Committee or any member or servant of the Committee, the production before him of any document and papers which he deems necessary, and may require any person holding or accountable for any such books, deeds, vouchers, documents or papers to appear before him at any such audit and examination, and to answer all questions which may be put to him with respect to the same or to prepare and submit any further statement which such auditor may consider necessary

(3) Within thirty days after the audit and examination have been completed, the auditor shall submit a report to the Committee upon each account audited and examined, and shall forward copies of his report to the Local Government and to the Committee

(4) The report of the auditor shall among other matters specify all items of expenditure which in his opinion are illegal, irregular or improper, all cases of failure to recover money or property due to the Committee, all instances of loss or wasteful expenditure of money or property due to negligence or misconduct and all instances in which any money or property has been devoted to any purpose not authorised by this Act

(5) The Committee shall cause the report and abstracts of account to be published in at least one English and one Urdu newspaper."

Insertion of
new sections
21, 22, 23, 24,
25 and 26 in
Act XXIII of
1936

10 After section 20 of the said Act, the following shall be added as sections 21, 22, 23, 24, 25 and 26, namely —

Consideration
of auditor's
report by the
committee

21 The Committee in general meeting shall consider the reports of the auditor and satisfy itself that no expenditure shown therein has been incurred otherwise than in accordance with the provisions of this Act, (a) and shall pass such orders as are in its opinion necessary and proper

- to rectify any illegal unauthorised or improper expenditure as it deems proper or
- (b) Serve a notice on the person concerned requiring him to show cause within one month from the date of the service of such notice why such payment should not be surcharged or such amount should not be charged against him after considering such cause as may be shown by him and affording him a reasonable opportunity of being heard the Committee may surcharge such payment or charge the amount of any loss or deficiency against him and shall in every case certify the amount due from him
- 22 Every amount certified under sub section (b) of section 21 as due from him shall if not paid within sixty days next after the date of the certification thereof be recoverable from him as a public demand payable to the Committee Recovery of certified amount as public demand
- 23 The cost of the audit of the accounts shall be paid out of the Durgah Fund Payment of audit cost from Durgah Fund
- 24 A person aggrieved by any order of surcharge or charge made against him under sub section (b) of section 21 may within thirty days of such order appeal to the prescribed authority which may after making such enquiry as it considers proper pass such orders as it thinks fit Appeal against order of charge or surcharge
- 25 Notwithstanding anything to the contrary contained in section 22 pending disposal of such appeal all proceedings on the certificate shall be stayed Stay of certified proceedings
- 26 " " " "

STATEMENT OF OBJECTS AND REASONS

The Durgah Khwaja Sahab Act was passed in 1936. Since then difficulties have arisen in its smooth working. The present amending Bill proposes to remedy the defects and obviate those difficulties.

The changes proposed in the Bill are though minor but very essential.

The Durgah Khwaja Sahab at Ajmersharif is an All India Institution and required therefore fair representation of all places and interests. A glance over the composition of the Durgah Committee will at once point out that there has been some deviation in the said principle inasmuch as the province of Delhi being an adjoining province and part and parcel of the same centrally administered area has been denied any representation on the Durgah Committee whereas the Muslim public of Ajmere Merwara say practically of Ajmersharif town have been given too much representation say 9 seats out of 25. Not only the different interests concerned for the peaceful and efficient administration of the Durgah and responsible for the proper conduct of the religious rights and ceremonies within the shrine have been

and contributions made to the Durgah by various constituencies (provinces), as a result of this over representation of the town people, there is always trouble in the peaceful administration of the Durgah so much so that the Mutawalli had to bring a suit for the declaration of his rights as Mutawalli, which ended in a decree in his favour. The Committee had to be saddled with unnecessary heavy expenses.

The changes proposed to be made in the amending Bill are explained briefly as follows :—

- Clause 2 of the Bill proposes an amendment of section 5 to provide representation to the Muslims of Delhi
- Clause 3 of the Bill—section 6 provides for the publication of names of the members of the Committee and its procedure
- Section 7 provides for addition in the disqualifications of members of the Committee
- Section 8 provides for the removal of President and members of the Committee from their office
- Clause 4—minor amendment in section 9
- Clause 6—substitution of section 14 with minor changes
- Clause 7—seeks amendment of section 15, to provide safeguards against irregularities in framing bye laws by the Committee
- Clause 9—substitution of section 20, with necessary changes to make it self contained
- Clause 10—Section 21 provides for the consideration of the Auditor's report by the Committee and order of surcharge
- Section 22 provides for recovery of certified amounts as Public demand
- Section 23 provides for payment of audit costs
- Section 24 provides for an appeal against the order of surcharge by the Committee
- Section 25 provides for the stay of certificate proceedings during the pendency of appeal
- Section 26 provides for publication of the annual report by the Committee

M A GHANI

M. N. KAUL,
Secy. to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 16th February, 1943 —

L A BILL No 8 OF 1943

4 Bill further to amend the Indian Penal Code, and to amend the Currency Ordinance, 1940.

WHEREAS it is expedient further to amend the Indian Penal Code and to amend the Currency Ordinance 1940 for the purpose hereinafter appearing,

It is hereby enacted as follows —

1 This Act may be called the Indian Penal Code (Amendment) Act, 1943 Short title

2 In Chapter XVIII of the Indian Penal Code, after section 489D the following section shall be inserted, namely — Insertion of new section 489E in Act XLV of 1860.

“489E (1) Whoever makes, or causes to be made or used for any purpose whatsoever or delivers to any person, any document purporting to be, or in any way resembling or so nearly resembling as to be calculated to deceive, any currency note or bank note shall be punished with fine which may extend to one hundred rupees Making or using documents resembling currency notes or bank notes.

(2) If any person, whose name appears on a document the making of which is an offence under sub section (1), refuses, without lawful excuse to disclose to a police officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made”

3 In section 4 of the Currency Ordinance, 1940, for the word figures and letter ‘and 489D’ the words figures and letters “489D and 489E” shall be substituted Amendment of section 4 Ord. IV of 1940

*The Governor General has been pleased to give the previous sanction required by section 108 (1) (b) of the Government of India Act 1935 to the introduction in the Legislative Assembly of this Bill

STATEMENT OF OBJECTS AND REASONS.

Photoprints and other reproductions of currency-notes and bank notes though printed for innocent purposes, have passed into circulation in a number of cases and it is considered undesirable that in a country like India with a large mass of illiterate and ignorant persons such reproductions should be permitted to go unchecked before it menaces the safety of the currency. It is proposed therefore, to put a stop to this practice by making it a punishable offence.

2 While the counterfeiting of any currency note or bank note constitute a criminal offence under section 489A read with section 29 of the Indian Penal Code there is no legal provision prohibiting the reproduction, or the production of imitations of currency and bank notes for such purposes as advertisement and the like where there is no intention to practise deception on any one nor even a knowledge that deception is likely to be practised with the help of imitations. The Bill is designed to fill this lacuna in the present law.

A J RAISMAN

NEW DELHI,
The 10th February, 1943

M. N. KAUL,
Secy to the Govt of India

The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, FEBRUARY 27, 1943

Separate paging is given to this Part in order that it may be filed as a separate compilation

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Select Committee on the Bill to make provisions in regard to entry residence the acquisition holding or disposal of property franchise the holding of public office or the carrying on of any occupation trade business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity was presented to the Legislative Assembly on the 18th February 1943 —

We the undersigned members of the Select Committee to which the Bill to make provisions in regard to entry residence the acquisition holding or disposal of property franchise the holding of public office or the carrying on of any occupation trade business or profession in British India by persons domiciled in the British Possessions on a basis of reciprocity was presented to the Legislative Assembly on the 18th February 1943 —

have considered the Bill and the papers noted in the margin and have now the honour to submit the Report with the Bill as amended by us annexed thereto

Long title and preamble—Except for the introduction of the references to travel and educational facilities in consequence of their insertion in clause 3 of the Bill the changes made are drafting changes only

Clause 1—The changes made are merely drafting improvements

Clause 2—We have omitted from sub clause (a) the words "and the United Kingdom" thereby making the provisions of the Bill applicable also to persons domiciled in the United Kingdom. Accepting as we do the principle of reciprocity on which the Bill is based and having regard to the expression of the same principle embodied in section 111 of the Government of India Act 1935 we consider this step logical and proper

Sub clause (b) has been amended to include persons travelling by air

Clause 3—The words "to which this Act has been applied under section 5" have been inserted in consequence of the insertion of the new clause 5 giving the Central Government power when the existence of discriminatory disabilities applicable to persons of Indian origin is discovered in any British Possession to apply the Act to that Possession. Travel and educational facilities

which
become
the
best
war

to impress on Government their anxiety that all possible action should at once be taken to secure during the war for Indians the same rights, treatment and privileges as are accorded to members of the home forces or the forces of any other Government

Clause 5—The reason for the insertion of this clause has already been explained

Clause 6—Except for the provision that rules made under the Act shall be made only after previous publication, the changes made are of drafting significance only. But the Committee is anxious that effective rules should be framed for application, if and when any need arises, and recommends to Gov

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in the name of the Honourable Member for the Department made on some-
what the same lines as are followed in relation to the Report of Public Accounts Committee

2 The Bill was published as follows —

IN ENGLISH

<i>Gazette</i>	<i>Date</i>
Gazette of India	1st November, 1941
Fort St. George Gazette	20th January, 1942
Bombay Government Gazette	18th December 1941
United Provinces Government Gazette	24th January, 1942
Punjab Government Gazette	30th January, 6th and 13th February, 1942
Central Provinces and Berar Gazette	12th December 1941
Assam Gazette	7th December 1941
Bihar Gazette	7th January, 1942
Orissa Gazette	12th December 1941
Coorg Gazette	2nd January, 1942
	25th December, 1941
	2nd January, 1942

<i>Province</i>	<i>Language</i>	<i>Date</i>
Madras	Tamil	27th January, 1942
	Telugu	
	Hindustani	
	Kanarese	
Bombay	Malayalam	25th December, 1941
	Marathi	
	Gujarathi	
	Kanarese	
United Provinces	Urdu	24th January, 1942
	Hindi	
	Urdu	
Sind	Hindi	1st January, 1942
	Sindhi	

3 We think that the Bill has not been so altered as to require re publication, and we recommend that it be passed as now amended

GHULAM BHIK NAIRANG.

GOVIND V DESHMUKH

M S ANEY

S SULTAN AHMED

F E JAMES

HOOSAINBOY A LALLJEE

SANT SINGH.

LALCHAND NAVALRAI

N M JOSHI

K C NEOGY.

RAZA ALI.

NEW DELHI,
the 18th February, 1943

L A BILL No 32 of 1941

[AS AMENDED BY THE SELECT COMMITTEE]

[Portions underlined or sidelined indicate the amendments suggested by the Committee, asterisks indicate omissions]

A Bill to make provisions on a basis of reciprocity in regard to entry into travel, residence, the acquisition, holding or disposal of immovable property, holding of trade, busi-
franchise in British India of, persons domiciled in * British Possessions * *

Preamble

reci-
sitic

educational facilities, the holding of public office, or the carry-
 ing on of any occupation, trade, business or profession in
 British India by, and the franchise in British India of, persons
 domiciled in * British Possessions * *,

It is hereby enacted as follows —

1 (1) This Act may be called the Reciprocity Act, Short title
extent and
commence-
ment
 1943

(2) It extends to the whole of British India

(3) It shall come into force on such date as the Central
Government may by notification in the official Gazette,
appoint

2 In this Act, unless there is anything repugnant Definitions
 in the subject or context—

- (a) "British Possession" means any part of His Majesty's Dominions other than British India * * * and includes Protectorates and territories which are administered by a Dominion as a mandatory on behalf of the League of Nations, and
- (b) "entry" includes landing at any port in British India during the stay in British India of a ship or aircraft on its way to a destination outside British India.

3 Persons, not being of Indian origin, domiciled in any Reciprocity
of rights
 British Possession to which this Act has been applied under
section 5 shall * be entitled * only to such rights
and privileges as regards entry, travel, residence, the acqui-
sition, holding or disposal of property, educational facilities,
franchise, the holding of public office, or the carrying on of

any occupation, trade business or profession in British India as are accorded by the law or administration of such Possession to persons of Indian origin

Provided that the provisions of this section relating to entry, travel and residence shall not apply to any person in the armed forces of a British Possession until the expiry of one year after the termination of the present hostilities

Burden of
proof on
person
claiming
exemption.

4 If any person alleged to be domiciled in any British Possession and to be subject to the provisions of this Act pleads that he is not so domiciled, or that the provisions of this Act do not apply to him, the onus of proving the truth of such a plea shall be on him

Power of
Central
Government
to apply the
Act

5 The Central Government may, by notification in the official Gazette, apply this Act to any British Possession

Power to make
rules

— — — — —
* * * * *

M. N. KAUL

Secy. to the Govt. of India

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 22nd February, 1943 —

L A BILL No 9 OF 1943

A Bill further to amend the Code of Civil Procedure, 1908

WHEREAS it is expedient further to amend the Code of Civil Procedure 1908, for the purposes hereinafter appearing,

It is hereby enacted as follows —

1. This Act may be called the Code of Civil Procedure (Amendment) Act 1943 short title

2. In the proviso to sub section (1) of section 60 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code),— Amendment of section 60, Act V of 1908

(a) in clause (h), the words "and salary, to the extent of the first hundred rupees and one half the remainder of such salary shall be omitted,

(b) for clause (i) and the proviso thereto the following clause and proviso shall be substituted, namely —

(i) salary to the extent of the first hundred rupees and one half the remainder

Provided that where such salary is the salary of a servant of the Crown or a servant of a railway company or local authority, and the whole or any part of the portion of such salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree shall be finally exempt from attachment in execution of that decree

(c) in clause (l), for the words public officer the words 'servant of the Crown' shall be substituted, and for the words 'any such officer or servant' the words "any such servant" shall be substituted,

(d) in Explanation 1, for the words 'public officer' the words "servant of the Crown" shall be substituted,

(e) in *Explanation 3*—

(i) in clauses (i) and (ii), for the words "public officer" the word "person" shall be substituted,

(ii) in clause (iii), for the words "public officer" the words "servant of the Crown" shall be substituted

Amendment
of rule 48,
Order XXI,
Act V of
1903

3. In rule 48 of Order XXI in the First Schedule to the said Code,—

(a) in sub rule (1), for the words "public officer" the words "servant of the Crown" shall be substituted,

(b) in the *Explanation*,—

(i) in clauses (i) and (ii), for the words "public officer" the word "person" shall be substituted,

(ii) in clause (iii) for the words "public officer" the words "servant of the Crown" shall be substituted

STATEMENT OF OBJECTS AND REASONS.

When section 60 of the Code of Civil Procedure, 1908, was amended by Act IX of 1937, the intention was that all Government servants should receive the protection afforded by clauses (i) and (i) of the proviso to sub section (1) of section 60. The expression "public officer" used in those clauses has been found however to exclude certain Government servants of the artisan class who, while thus deprived of the protection afforded by clauses (i) and (i) are not 'labourers' and are, therefore, not entitled to the protection afforded by clause (h). The Bill substitutes the expression "servant of the Crown" for the expression "public officer" in the two clauses which have been found defective, and carries out certain alterations consequential on this change. The opportunity has also been taken by a slight re arrangement of the wording of clauses (h) and (i) of section 60 to clarify the import of those two clauses and remove a possible source of ambiguity.

S SULTAN AHMED.

NEW DELHI,

The 16th February, 1943

M N KAUL,

Secy to the Govt of India

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 22nd February 1948 —

L A BILL No 10 OF 1948

A Bill further to amend the Aligarh Muslim University Act 1920

XL of 1920. WHEREAS it is expedient further to amend the Aligarh Muslim University Act 1920 for the purposes hereinafter appearing

It is hereby enacted as follows —

1 This Act may be called the Aligarh Muslim University (Amendment) Act 1948 Short title,

XL of 1920. 2 In clause (k) of section 29 of the Aligarh Muslim University Act 1920 (hereinafter referred to as the said Act) the word 'Intermediate' shall be omitted Amendment of section 29 Act XL of 1920

3 To sub section (3) of section 30 of the said Act the following provisions shall be added namely — Amendment of section 30 Act XL of 1920

Provided that until the termination of the hostilities arising on and subsequently to the 3rd day of September 1939, a new Ordinance or an amendment or repeal of an existing Ordinance occasioned by an emergency having its origin in conditions due to the said hostilities shall have validity if submitted by the Executive Council or the Academic Council as the case may be direct to the Central Government and approved by the latter

Provided further that any new Ordinance or amendment or repeal of an existing Ordinance made under the provisions of the foregoing proviso shall cease to have validity on the expiration of one year from the date on which the said hostilities terminate

4 In sub section (2) of section 33 of the said Act for the words 'a member or a teacher of the said Act' the words 'a teacher of or a person holding paid employment under' shall be substituted Amendment of section 33 Act XL of 1920

STATEMENT OF OBJECTS AND REASONS.

The amendment made by clause 2 of the Bill in section 29 of the Aligarh Muslim University Act 1920 (XL of 1920), is a consequential amendment rendered necessary by the passing of Act XVII of 1941 and overlooked at the time that that Act was passed

The addition made to sub section (3) of section 30 of the parent Act is considered necessary with a view to enable the University to modify its Ordinances expeditiously and provide special courses of study for students who wish to join the fighting forces

The intention of sub section (2) of section 33 of the parent Act appears to be that for each subject of a degree examination there should be at least one independent examiner as distinguished from the teachers and paid employees of the University. The expression "member of the University", which is omitted from the sub section by the amendment now made, is not defined in the Act and has been found in practice difficult to interpret.

J D TYSON

NEW DELHI

The 20th February 1943

M N KAUL,

Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 2nd February 1943 —

I A BILL, No 11 of 1943

A Bill to amend the Coffee Market Expansion Act 1942

VII of 1942

WHEREAS it is expedient to amend the Coffee Market Expansion Act 1942 for the purposes hereinafter appearing

It is hereby enacted as follows —

1 This Act may be called the Coffee Market Expansion Short title (Amendment) Act 1943

VII of 1942.

2 In section 3 of the Coffee Market Expansion Act 1942 (hereinafter referred to as the said Act) — Amendment of section 3 of Act VII of 1942

(a) in clause (a) for the words Indian Coffee Market Expansion Board the words Indian Coffee Board shall be substituted

(b) to clause (i) the following words shall be added namely —

a mortgagee in possession or a lessee

3 In section 4 of the said Act —

(a) in sub section (1) for the words Indian Coffee Market Expansion Board where they occur for the second time the words Indian Coffee Board shall be substituted Amendment of section 4 of Act VII of 1942

(b) sub section (2) shall be re numbered as sub section (4) and the following sub sections shall be inserted as sub sections (2) and (3) namely —

(2) The Board shall consist of—

(a) five persons representing the agricultural departments of the Provincial Governments of Madras and Coorg and of the Governments of the States of Mysore Travancore and Cochin nominated in the case of the States Representatives by the Government of the State concerned and in the other cases by the Central Government

(b) eleven persons representing the coffee growing industry namely —

(i) three persons nominated by the Government of the Mysore State

(ii) two persons nominated by the Central Government to represent Madras and Coorg respectively

(iii) three persons nominated by the United Planters Association of Southern India

(iv) one person nominated by the Coorg Planters Association

- (v) one person nominated by the Mysore Planters Association,
- (vi) one person nominated by the Indian Planters Association, Mysore,
- (c) four persons representing the coffee trade interests nominated by the Central Government,
- (d) one person representing the Imperial Council of Agricultural Research, nominated by the Central Government,
- (e) two persons nominated by the Central Government to represent—
 - (i) the coffee growing industry in the Mysore State and
 - (ii) the Shevarov Planters' Association, Yercaud
- (3) Where a member of the Board dies resigns or is removed, or ceases to reside in India, or becomes incapable of acting, the Central Government may on the recommendation of the authority or body which was entitled to make the first nomination under sub section (2) or where such recommendation is not made within a reasonable time then on its own initiative nominate a person to fill the vacancy "

Amendment of section 4 In section 4 of the said Act for the words "Indian Act VII of 1942 Coffee Market Expansion Board the words 'Indian Coffee Board shall be substituted

Substitution of new section for section 16 of 1942. 5 For section 16 of the said Act the following section shall be substituted namely —

- Fixation of prices for sale of coffee of
- 16 (1) The Central Government may, after consultation with the Board by notification in the official Gazette fix the price or prices at which coffee may be sold wholesale or retail in the Indian market
 - (2) No registered owner or licensed curer or dealer shall sell coffee wholesale or retail in the Indian market at a price or prices higher than the price or prices fixed under this section "

Amendment of section 17. 6 To the portion of section 17 of the said Act which precedes the proviso the following words shall be added, namely —

"nor shall a registered owner sell or contract to sell in the Indian market any coffee produced on his estate in any year for which no internal sale quota is allotted to the estate"

Amendment of section 19. 7 To section 19 of the said Act the following words shall be added namely —
 "and no owner of a registered estate shall sell from or store on his estate or cause or permit to be

sold from or stored on his estate any coffee grown on any estate not registered under this Act'

8 In sub section (1) of section 22 of the said Act before the words 'The Board shall' the words 'Unless with the previous sanction of the Central Government the Board decides that no internal sale quotas shall be allotted' shall be inserted Amendment of section 22, Act VII of 1942

9 In sub section (2) of section 23 of the said Act after the words 'the Board may' the following shall be inserted namely — Amendment of section 23, Act VII of 1942

"without prejudice to any penalty to which the said owner is liable under section 37A"

10 In section 25 of the said Act,—

(a) in sub section (1) after the words "allotted to that estate" the following words shall be inserted, namely — Amendment of section 25, Act VII of 1942

"or when no internal sale quotas have been allotted to estates all coffee produced by the estate",

(b) in sub section (2) after the words 'in such places' the words 'at such times' shall be inserted,

(c) in sub section (4) before the word 'prepare' the words "from time to time" shall be inserted

(d) in sub section (5) the words 'before an internal sale quota has been allotted to an estate' shall be omitted

11 In sub section (1) of section 29 of the said Act after the words "having regard to the internal sale quota of the estate" the words 'where one has been allotted' shall be inserted and to the end of the sub section the following sentence shall be added namely — Amendment of section 29, Act VII of 1942

'Where no internal sale quotas have been allotted to estates the curing establishment shall report merely the whole amount of coffee sent in each such consignment'

12 To sub section (2) of section 34 the following proviso shall be added namely — Amendment of section 34, Act VII of 1942

Provided that in calculating the sum of all payments made under sub section (1) and the value of the coffee delivered to the surplus pool out of the year's crop respectively any payment accepted by a registered owner as final payment in immediate settlement for coffee delivered by him for inclusion in the surplus pool and the value of any such coffee shall be excluded

Insertion of new section 37A in Act VII of 1942. 13 After section 37 of the said Act the following section shall be inserted, namely —

Contravention of section 23(1)

37A Any registered owner who fails to furnish the return required by sub-section (1) of section 23 : : required by that sub-section shall be punishable with fine which may extend to one thousand rupees.

Insertion of new sections 38A and 38B in Act VII of 1942. Contravention of section 25.

14 After section 38 of the said Act the following sections shall be inserted, namely —

38A Any registered owner or licensed curer who fails to deliver any coffee to the Board as required by or under sub-sections (1) and (2) of section 25 : : shall be punishable with fine which may extend to one thousand rupees and the Court by which such person is convicted may order the confiscation and delivery to the Board of any coffee in respect of which the offence was committed.

Powers to seize coffee withheld from inclusion in surplus pool.

38B If the Board is satisfied that any coffee which is required under the provisions of section 25 to be delivered for inclusion in the surplus pool is being or is likely to be disposed of otherwise than by such delivery, the Board may order the seizure of such coffee, and may authorise an officer of the Board to effect seizure thereof for delivery for inclusion in the surplus pool, and such authorisation shall be sufficient warrant for such officer to take all steps necessary to secure possession of the coffee.

Amendment of section 40, Act VII of 1942.

15 To sub-section (2) of section 40 of the said Act the following proviso shall be added, namely —

Provided that the Central Government may, by notification in the official Gazette direct that the previous sanction of the Central Government shall not be necessary for complaints in such cases or classes of cases as may be specified in the notification."

Amendment of section 44, Act VII of 1942.

16 In section 44 of the said Act after the words 'curing establishment' the words "or any place where coffee is stored or exposed for sale" shall be inserted and the words, 'by the estate' shall be omitted.

Amendment of section 46, Act VII of 1942.

17 In section 46 of the said Act the words 'to whom an internal sale quota is allotted' shall be omitted.

Insertion of new section 47A in Act VII of 1942.

18 After section 47 of the said Act the following section shall be inserted, namely —

Bar of legal proceedings.

"17A No suit, prosecution or other legal proceeding shall be against the Board or any officer of the Board for or in respect of anything in good faith done or intended to be done under this Act."

STATEMENT OF OBJECTS AND REASONS

Under the existing provisions of the Coffee Market Expansion Act 1942 the Indian Coffee Market Expansion Board has to allot to each registered estate a certain percentage of its total estimated crop as its internal sale quota the balance of the crop being set apart for delivery to the surplus pool controlled by the Board. This arrangement has not been found to bestow on the growers the fullest benefit of the ruling prices in the internal market. The Third Coffee Control Conference consisting of representatives of the various sections of the coffee industry and of the Indian Coffee Market Expansion Board recommended that, in the general interests of the producers, the Board should be empowered subject to the previous sanction of the Central Government not to allot internal sale quotas in any year *i.e.*, to take into the surplus pool the entire crop of registered estates in order that the crop may be uniformly controlled by the Board throughout the year and the full benefit of prices reaches all registered estates. The Conference also recommended several other amendments to the Coffee Market Expansion Act which have been found necessary on administrative grounds as a result of further experience gained of the working of the Coffee Control Scheme.

The recommendations of the Conference have been found to be in the interest of the coffee industry as a whole and the Bill is designed to give effect to them.

T S PILAY

NEW DELHI

The 20th February 1943

NOTES ON CLAUSES

Clauses 2(a) 3(a) and 4—The designation of the Board is simplified and brought into conformity with that of similar Board in other parts of the Empire.

Clause 2(b)—A number of estates are managed by mortgagees or lessees some of whom attempt to evade the obligations imposed on owners by the Act.

Clause 3(b)—By this amendment the constitution of the Board is now set out in the Act itself instead of being described in two other enactments the Coffee Market Expansion Ordinance 1940 and the Indian Coffee Cess Act 1935.

Clause 5—The price control exercised over owners and curers is extended to dealers, and power is given to fix both wholesale and retail prices.

Clause 6—The amendment is consequential on that made by clause 8.

Clause 7—The amendment is designed to prevent the owner of a registered estate from passing off coffee from an unregistered estate as his own without preventing transactions between two registered owner concerning coffee covered by an internal sale quota if one is allotted.

Clause 8—This is the main amendment for the purpose of implementing the decision that the Board should have power to take over the whole coffee crop of registered estates instead of merely the excess over the quota represented by the internal sale quota which the Board must at present allot to each estate.

Clause 9 and clause 13—The new section 37A is necessary properly to enforce the provisions of section 23. The amendment made in section 23(2) is consequential on the insertion of the new section 37A.

Clause 10—Sub clause (a) The amendment is consequential on that made by clause 8.

Sub clause (b) The amendment will enable the Board to fix a time limit for delivery of coffee to the surplus pool.

Sub clause (c) The amendment enables the differential scale to be revised periodically in the light of past experience.

Sub clause (d) The amendment is consequential on that made by clause 8.

Clause 11—The amendments are consequential on that made by clause 8.

Clause 12—The object of the amendment is to enable the Board to pay the whole purchase price outright to small growers on delivery of their coffee to the surplus pool with the object of enabling them to meet their expenses.

Clause 14—The first new section is necessary to enforce compliance with section 25, the second furnishes another safeguard against unauthorised sales of coffee which should be delivered to the Board.

Clause 15—The amendment aims at avoiding undue delay in launching prosecutions.

Clause 16—The change made has been recommended in order to detect and render more difficult the fraudulent sale of coffee without licence.

Clause 17—The amendment is consequential on that made by clause 8.

Clause 18—The new section gives protection on the usual lines for acts done in good faith.

M. N. KAUL

Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 25th February, 1943 —

L A BILL No 12 of 1943

A Bill further to amend the Indian Army Act 1911 and the Indian Air Force Act 1932

VIII of 1911
XIV of 1932

WHEREAS it is expedient further to amend the Indian Army Act 1911 and the Indian Air Force Act 1932 for the purposes hereinafter appearing,

It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Army and Air Force (Military Prisons and Detention Barracks) Act 1943

VIII of 1911

2 For section 107 of the Indian Army Act 1911 the following section shall be substituted, namely —

Amendment
of section
107 Act VIII
of 1911

107 (1) Whenever any sentence of transportation is passed under this Act or whenever any sentence so passed is commuted to transportation the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall forward him to such prison with the warrant

Execution
of sentence
of trans-
portation
or imprison-
ment

(2) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence so passed is commuted to imprisonment the confirming officer or in the case of a sentence which does not require confirmation the Court or in either case such officer as may be prescribed may direct either that the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison and the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person under sentence is to be confined and shall forward him to such prison with the warrant

Provided that in the case of a sentence of imprisonment for a period not exceeding three months in lieu of a direction that the sentence shall be carried out by confinement in a civil or a military prison a direction may be made that the sentence

*The Governor General has been pleased to give the previous sanction required by section 106 (1) (c) read with section 313 (4) (a) of the Government of India Act 1935 to the introduction in the Legislative Assembly of this Bill

shall be carried out by confinement in military custody

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the force in the field may from time to time appoint

As by Section
of new
section for
section 109
Act VIII of
1911

Commencement of
the Act
in India
and
in the
Provinces

Addition of
new section
111B Act
VIII of 1911

Enabling men
and regulation
of military
prisons

3 For section 109 of the Indian Army Act 1911 the VIII of 1911 following section shall be substituted namely —

‘109 Whenever an order is duly made under this Act setting aside or varying any sentence or order or warrant under which any person is confined in a civil or military prison a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in-charge of the prison in which such person is confined

4 To Chapter IV of the Indian Army Act 1911, after section 111A the following section shall be added namely —

‘111B (1) The Central Government may set apart any building or part of a building or any place under its control as a military prison for the confinement of persons sentenced to imprisonment under this Act

(2) The Central Government may make rule providing —

(a) for the government management and regulation of such military prisons

(b) for the appointment and removal and powers of the Inspector or the Governor and officers thereof

(c) for the labour of prisoners undergoing confinement thereon and for enabling persons to earn by special industry and good conduct a remission of a portion of their sentence, and

(d) for the discipline of prisoners and the maintenance of discipline among them and the punishment by personal correction reprimand or otherwise of offences committed by prisoners

Provided that such rule shall not authorise corporal punishment to be inflicted for any offence nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons in British India

(3) Rules made under this section may provide for the application to military prisons of any of the provisions of the Prisons Act 1894 relating to IX of 1911

the duties of officers of prisons and the punishment of persons not prisoners

XIV of 1932

5 For section 113 of the Indian Air Force Act, 1932, the following section shall be substituted namely —

Substitution of new section for section 113 Act XIV of 1932

113 Whenever any sentence of imprisonment is passed under this Act or whenever any sentence so passed is commuted to imprisonment the confirming officer or, in the case of a sentence which does not require confirmation the Court or in either case such officer as may be prescribed may direct either that the sentence shall be carried out by confinement in a civil prison or by confinement in a military or air force prison and the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person under sentence is to be confined and shall forward him to such prison with the warrant

Execution of sentence of imprisonment

Provided that in the case of a sentence of imprisonment for a period not exceeding three months in lieu of a direction that the sentence shall be carried out by confinement in a civil military or air force prison a direction may be made that the sentence shall be carried out by confinement in air force custody

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint

V of 1932

6 To Chapter IX of the Indian Air Force Act 1932 after section 119 the following section shall be added namely —

Addition of new section 119A Act XIV of 1932

119A (1) The Central Government may set apart any building or part of a building or any place under its control as an air force prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Act

Establishment and regulation of air force prisons and detention barracks

(2) The Central Government may by rules provide —

- (a) for the government management and regulation of such air force prisons and detention barracks
- (b) for the appointment and removal and powers of inspectors visitors governors and officers thereof
- (c) for the labour of prisoners and persons undergoing detention therein and for enabling such

prisoners or persons at large by special industry and good conduct a remission of a portion of their sentence, and

- (d) for the safe custody of such prisoners or persons and the maintenance of discipline among them and the punishment by personal correction, restraint or otherwise, of offences committed by them

Provided that such rules shall not authorise corporal punishment to be inflicted for any offence nor render the imprisonment or detention more severe than it is under the law for the time being in force relating to civil prisons in British India

- (3) Rules made under this section may provide for the application to air force prisons or detention barracks of any of the provisions of the Prison Act 1894 relating to the duties of officers of civil prisons and the punishment of persons not prisoners "

STATEMENT OF OBJECTS AND REASONS.

The Government of India have recently sanctioned the establishment of military prisons with the object of—

- (a) providing additional facilities for the incarceration in military custody of persons subject to the Indian Army Act and the Indian Air Force Act, who are ordered to undergo sentences of imprisonment awarded by courts martial, but for whom sufficient accommodation in cells does not exist, and
- (b) conserving manpower, by making provision for the committal of a larger number of military and air force prisoners to military instead of civil prisons, with a view to their subsequent return to the service. A military or air force prisoner who is committed to a civil prison has to be discharged from the service

2 The Indian Army Act and the Indian Air Force Act make no provision either for the imprisonment in military custody of persons who are sentenced to imprisonment exceeding three months or for the establishment, government and discipline of such military prisons. It is therefore, proposed—

- (i) to amend sections 107 and 109 of the Indian Army Act and sections 113 and 116 of the Indian Air Force Act to permit of the imprisonment in military custody of persons who are sentenced to imprisonment exceeding three months and
- (ii) to add to the two Acts sections empowering the Central Government to establish military prisons and to make rules for their management

C M TRIVEDI

NEW DELHI,
The 22nd February, 1943

M N KAUL,
Secy to the Govt of India



NEW DELHI, SATURDAY, MARCH 6, 1943

Separate paging is given to this Part in order that it may be filed as a separate compilation

PART V

Introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 27th February, 1943 —

L A BILL No 13 of 1943

A B

b

Act 1898, to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act 1942 to fix rates of income tax and super tax to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged and to amend the Indian Finance (Supplementary and Extending) Act 1931

WHEREAS it is expedient to fix the duty on salt manufactured in or imported by land into certain parts of British India to fix maximum rates of postage under the Indian Post Office Act 1898 to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act 1942 to fix rates of income tax and super tax to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged and to amend the Indian Finance (Supplementary and Extending) Act 1931

It is hereby enacted as follows —

1 (1) This Act may be called the Indian Finance Act 1943 Short title and extent

(2) It extends to the whole of British India

2 The provisions of section 7 of the Indian Salt Act 1882 shall in so far as they enable the Central Government to impose by rule made under that section Fixation of salt duty

* The Governor General has been pleased to give the previous sanction required by subsection (2) of section 67 of the Government of India Act as saved from repeal by paragraph 12 of the Government of India (Commencement and Transitional Provisions) Order 1946 and the previous sanction required by subsection (1) of section 141 of the Government of India Act 1935 to the introduction in the Legislative Assembly of this Bill.

a duty on salt manufactured in or imported into any part of British India be construed as if for the year beginning on the 1st day of April 1943 they imposed such duty at the rate of one rupee and four annas per maund of eighty two and two sevenths pounds avoirdupois of salt manufactured in or imported by land into any such part and such duty shall for all the purposes of the said Act be deemed to have been imposed by rule made under that section

Inland
postage
rates

3 For the year beginning on the 1st day of April, 1943 the Schedule contained in Schedule I to this Act shall be inserted in the Indian Post Office Act, 1898, as VI of 1898 the First Schedule to that Act

Continu-
tion of
additional
duties of
customs
imposed by
sect on 6
Act XII of
1942

4 The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act 1934 or under XXVII of the said Schedule read with any notification of the 1934 Central Government for the time being in force imposed up to the 31st day of March 1943 by section 6 of the Indian Finance Act 1942 shall be levied and XII of 1942 collected as provided in that section up to the 31st day of March 1944

Income tax
and super-
tax

5 (1) Subject to the provisions of sub sections (2) and (3) —

(a) income tax for the year beginning on the 1st day of April, 1943, shall be charged at the rates specified in Part I of Schedule II increased in the cases to which sub paragraph (b) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income tax and

(b) rates of super tax for the year beginning on the 1st day of April 1943 shall for the purposes of section 55 of the Indian Income tax Act 1922 be those specified in Part II of Schedule II increased in the cases to which paragraphs A B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super tax

(2) In making any assessment for the year ending on the 31st day of March 1944 —

(a) where the total income of an assessee not being a company includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income tax Act 1922 to have paid income tax imposed in British India the income tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income tax payable according to the rate applicable under the operation of the Indian Finance Act 1942 on his total income the XII of 1942

same proportion as the amount of such inclusions bears to his total income,

(b)

VI of 1922

tax has been or might have been deducted under the provisions of sub section (2) of section 18 of the Indian Income tax Act, 1922, the super tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super tax payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusions bears to his total income

XII of 1942

VI of 1922

(3) In cases to which section 17 of the Indian Income-tax Act 1922, applies the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub section (1) of this section, and in accordance with the provisions of sub section (2) of this section where applicable

VI of 1922

(4) For the purposes of this section and of the rates of tax imposed thereby, the expression 'total income' means total income as determined for the purposes of income tax or super tax, as the case may be in accordance with the provisions of the Indian Income tax Act, 1922

(5) Notwithstanding anything contained in sub section (1) or sub section (2) no tax shall be payable in cases to which sub paragraph (a) of paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such conditions as the Central Government may by rule prescribe for the purposes of this sub section an amount representing not less than one rupee for every complete unit of twenty five rupees by which his total income exceeds seven hundred and fifty rupees

VI of 1922

Provided that where the total income includes any income chargeable under the head 'Salaries' or under the head 'Interest on Securities' or any income from dividends in respect of which he is deemed under section 49B of the Indian Income tax Act 1922, to have paid income tax imposed in British India the amount to be deposited by the assessee in order to obtain the exemption conferred by this sub section shall be an amount bearing to the minimum required to be deposited under the foregoing provisions of this sub section the same proportion as the amount of his total income diminished by the amount of such inclusions bears to the amount of his total income

(6) A deposit made in accordance with the provisions of sub section (5) shall not in any way be capable of being charged and shall not be liable to attachment under any decree or order of any Civil Revenue or

Criminal Court in respect of any debt or liability incurred by the depositor and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on any such deposit

(7) Where the total income of an assessee referred to in sub paragraph (b) of paragraph A of Part I of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income tax Act, 1922, or any notification issued thereunder, shall be funded for the benefit of the assessee to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix:

Provided that nothing in this subsection shall apply to any part of total income to which clause (a) of sub section (2) applies

Explanation—In computing the amount to be funded under this sub section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees

(8) Notwithstanding anything contained in subsection (7) of section 8 of the Indian Finance Act, 1942, the amount to be funded under that sub section for the assessee's benefit in respect of any assessment for the year ending on the 31st day of March, 1943, shall be calculated on his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income tax Act, 1922, or any notification issued thereunder

(9) The Central Government may by notification in the official Gazette, make rules prescribing the manner and conditions referred to in sub section (5)

Continuance
of and rate
of excess
profits tax

8 (1) In sub clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1943" the words and figures "31st day of March, 1944" shall be substituted

(2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1943, be an amount equal to sixty six and two thirds per cent of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits

Amendment
of section 5
Indian
Finance
(Supple-
mentary and
Extending)
Act, 1931

7. In section 5 of the Indian Finance (Supplementary and Extending) Act, 1931, the words "motor spirit or kerosene" and the words and figures "or under the Motor Spirit (Duties) Act, 1917, or under the Indian Finance Act, 1922" shall be omitted, and for the words "or under any of the said Acts" the words "or under the said Act" shall be substituted

SCHEDULE I

Schedule to be inserted in the Indian Post Office Act, 1898

(See section 3)

" THE FIRST SCHEDULE**INLAND POSTAGE RATES**

(See section 7)

Letters

For a weight not exceeding one tola	One and a half annas
For every tola or fraction thereof, exceeding one tola	One anna

Postcards

Single	Nine pies
Reply	One and a half annas

Book, Pattern and Sample Packets

For the first five tolas or fraction thereof	Nine pies.
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For every additional two and a half tolas, or fraction thereof in excess of five tolas	Three pies
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Registered Newspapers

For a weight not exceeding ten tolas	Quarter of an anna
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For a weight exceeding ten tolas and not exceeding twenty tolas	Half an anna
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For every twenty tolas or fraction thereof, exceeding twenty tolas	Half an anna
--	--------------

In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—	Half an anna
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For a weight not exceeding ten tolas

For every additional five tolas or fraction thereof, in excess of ten tolas

Quarter of an anna

It is provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office

Parcels

For a weight not exceeding forty tolas	Six annas
--	-----------

For every forty tolas, or fraction thereof, exceeding forty tolas	Four annas
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SCHEDULE II

(See section 5)

PART I*Rates of Income tax*

A—In the case of every individual, Hindu undivided family unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

(a) Where the total income does not exceed Rs 2,000—

Rate
Nil
Six pies in the rupee

	Rate	Surcharge
1 On the first Rs 1 500 of total income	Nil	Nil
2 On the next Rs 3 500 of total income	Nine pies in the rupee	Six pies in the rupee
3 On the next Rs 5 000 of total income	One anna and three pies in the rupee	Ten pies in the rupee
4 On the next Rs 5 000 of total income	Two annas in the rupee	One anna and four pies in the rupee
5 On the balance of total income	Two annas and six pies in the rupee	One anna and eight pies in the rupee

B—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income tax Act 1922 income tax is to be charged at the maximum rate—

	Rate	Surcharge
On the whole of total income	Two annas and six pies in the rupee.	One anna and pies in the

PART II

Rates of Super tax

A—In the case of every individual Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraphs B and C of this Part apply—

	Rate	Surcharge
1 On the first Rs. 25 000 of total income	Nil	Nil
2 On the next Rs. 10 000 of total income	One anna in the rupee	One anna in the rupee
3 On the next Rs. 10 000 of total income	Two annas in the rupee	One anna and six paces in the rupee
4 On the next Rs. 10 000 of total income	Three annas in the rupee	Two annas in the rupee
5 On the next Rs. 10 000 of total income	Four annas in the rupee	Two annas and six paces in the rupee
6 On the next Rs. 10 000 of total income	Five annas in the rupee	Three annas in the rupee
7 On the next Rs. 10 000 of total income	Six annas in the rupee	Three annas in the rupee
8 On the balance of total income	Seven annas in the rupee	Three annas and six paces in the rupee

B—In the case of every local authority—

	Rate	Surcharge
On the whole of total income	One anna in the rupee	One anna in the rupee

C—In the case of an association of persons being a co operative society, other than the Samkatta Saltowners' Society in the Bombay Presidency for the time being registered under the Co operative Societies Act 1912 or under an Act of the Provincial Legislature governing the registration of Co operative Societies—

	Rate	Surcharge
1 On the first Rs. 25 000 of total income	Nil	Nil
2 On the balance of total income	One anna in the rupee	One anna in the rupee

D—In the case of every company—

	Rate.
On the whole of total income	Two annas in the rupee

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to continue for a further period of one year the existing rate of salt duty to increase the postage rate on letters exceeding one tola to continue the additional duties imposed by section 6 of Act XII of 1942 and to increase the corporation tax and the Central surcharge on income tax and super tax

2 Clause 2 provides for the continuance for a further period of one year of the present inland postage rates except that the postage on every tola or fraction thereof exceeding the first tola in the case of letters is raised from half an anna to one anna and the rate on the first 40 tolas of Parcels is increased from 4 annas to 6 annas

3 Clause 3 provides for the continuance for a further period of one year of the present inland postage rates except that the postage on every tola or fraction thereof exceeding the first tola in the case of letters is raised from half an anna to one anna and the rate on the first 40 tolas of Parcels is increased from 4 annas to 6 annas

4 Clause 4 provides for the continuance of the additional customs duties imposed by section 6 of the current year's Finance Act

5 Clause 5 provides for the continuance for a further period of one year of the present inland postage rates except that the postage on every tola or fraction thereof exceeding the first tola in the case of letters is raised from half an anna to one anna and the rate on the first 40 tolas of Parcels is increased from 4 annas to 6 annas

6 Clause 6 provides for the continuance for a further period of one year of the present inland postage rates except that the postage on every tola or fraction thereof exceeding the first tola in the case of letters is raised from half an anna to one anna and the rate on the first 40 tolas of Parcels is increased from 4 annas to 6 annas

7 Clause 7 is intended merely to clarify the position as regards the excise duty on kerosene

NEW DELHI
The 17th February 1943

A J RAISMAN

The following Bill* was introduced in the Legislative Assembly on the 27th February, 1913 —

L A BILL No 14 of 1913

A Bill to provide for the imposition and collection of excise duties on tobacco

WHEREAS it is expedient to impose excise duties on tobacco and to provide for the collection thereof

It is hereby enacted as follows —

1 (1) This Act may be called the Tobacco (Excise Short title
Duty) Act, 1913 and extent

(2) It extends to the whole of British India

2 In this Act, unless there is anything repugnant Definitions
in the subject or context,—

(a) "tobacco" means any form of tobacco, whether cured or uncured, and whether manufactured or not, and includes the leaf, stalks and stem of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth,

(b) "curing" includes wilting, drying, fermenting and any process for rendering tobacco fit for marketing or manufacture,

(c) "manufacture" means the preparation of cigarettes, cigars, cheroots, *biris*, cigarette or pipe or hookah tobacco, chewing tobacco, or snuff, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour for the production of these commodities, but also any person who engages in their production on his own account if his products are intended for sale

(d) "sale" and "purchase", with their grammatical variations and cognate expressions mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration,

(e) "wholesale dealer" means a person who buys or sells tobacco wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who in addition to making contracts for the sale or purchase of tobacco for others, stocks tobacco belonging to others as an agent for the purpose of sale,

(f) "prescribed" means prescribed by rules made under this Act

3 There shall be levied and collected in such Imposition
manner as may be prescribed duties of excise as and collec
at the rates, set forth in the Schedule on all cured tion of
tobacco in British India on the 1st day of April, 1913, excise duties
on tobacco

* The Governor General has been pleased to give the sanction required by sub-section (2) of section 67 of the Government of India Act, as saved from repeal by paragraph 12 of the Government of India (Commencement and Transitional Provisions) Order, 1916 to the introduction in the Legislative Assembly of this Bill

on all tobacco cured in British India on or after that date and on all tobacco products mentioned in the Schedule and manufactured in British India on or after that date

Determi-
nation of value
for the
purpose of
duty

4 Where under this Act any article is chargeable with duty at a rate dependent on the value of the article such value shall be deemed to be the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold for delivery at the place of manufacture and at the time of its removal therefrom without any abatement or deduction whatever except trade discount and the amount of the duty then payable

Power of
Central
Government
to impose
customs
duty on
cured
tobacco

5 The Central Government may, by notification in the official Gazette impose on cured tobacco or any tobacco product mentioned in the Schedule brought into British India from the territory of any Indian State not being territory which has been declared under section 5 of the Indian Tariff Act 1934 to be foreign territory for the purposes of that section a duty of 11% of 1934 customs equivalent to the excise duty imposed by this Act on the like tobacco cured or the like tobacco product manufactured in British India

Certain
operations
to be subject
to licence

6 From such date as may be specified in this behalf by the Central Government by notification in the official Gazette no person shall engage in the curing wholesale purchase or sale (whether on his own account or as a broker or commission agent) storage, or manufacture of tobacco except under the authority and in accordance with the terms and conditions of a licence granted under this Act

Restriction
on possession
of
unmanu-
factured
tobacco

7 From such date as may be specified in this behalf by the Central Government by notification in the official Gazette no person shall except as provided by the rules made under this Act have in his possession unmanufactured tobacco in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of unmanufactured tobacco or of any variety of unmanufactured tobacco which may be possessed at any one time by such a person

Form and
conditions of
licence.

8 Every licence shall be subject to such area if restrictions and containing such particulars as may be prescribed

Penalty for
contraven-
tion of
section 6 or
section 7

9 Whoever contravenes any of the provisions of section 6 or section 7 shall be punishable with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both

Penalty for
evade-
ment of
duty or
failure to
supply
information

10 Whoever

to evade the pay-
ment of duty
under this Act or fails to
supply information as
required by the
Act or (unless with a
reasonable excuse) fails to
furnish such information
as may be required by the
Act shall be punishable
with imprisonment which
may extend to six months
or with fine which may
extend to two thousand
rupees or with both

with fine which may extend to two thousand rupees, or with both

11 Any Court trying an offence under this Act may order that any tobacco in respect of which the Court is satisfied that an offence under this Act has been committed, shall, together with the packages or coverings thereof be forfeited to His Majesty Power of Courts to order forfeiture of tobacco

12 In respect of duty and other sums payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Revenue to levy such duty or require the payment of such sums may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue Recovery of duty etc

13 The Central Government may, by notification in the official Gazette, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances be applicable in regard to like matters in respect of the duties on tobacco imposed by section 3 Application of the provisions of Act VIII of 1878 to the duties on tobacco

14 (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act Power of Central Government to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (i) provide for the assessment and collection of the duties, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid ;
- (ii) prohibit the curing or manufacture of tobacco except on land and premises approved for the purpose ;
- (iii) regulate the removal of tobacco from the place where grown, cured, stored or manufactured and its transport to or from the premises of a licensed curer, wholesale dealer or manufacturer, or a bonded warehouse or to a market ;
- (iv) regulate the curing, storage, wholesale sale and manufacture of tobacco, and provide for the appointment of officers of the Crown to supervise such curing, storage, wholesale sale and manufacture within any tobacco growing or manufacturing area ;
- (v) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering

tobacco into and clearing tobacco from such warehouses,

- (ii) impose on growers, curers, wholesale dealers, brokers commission agents, or manufacturers the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified,
- (iii) provide for the issuing of licences and transport permits and the fees if any, to be charged therefor,
- (iiii) provide for the detention of tobacco for the purpose of exacting the duty the confiscation, otherwise than under section 11 of tobacco in respect of which breaches of the Act or rules have been committed, and the disposal of tobacco so detained or confiscated,
- (ix) authorise and regulate the inspection of factories and the inspection or search of any place or conveyance used for the curing, storage, sale or transport of tobacco,
- (x) authorise and regulate the composition of offences against or liabilities incurred under, this Act or the rules made thereunder,
- (xi) provide for the grant of a rebate of the duty paid on tobacco which is exported by sea to any country outside India or shipped for consumption on a voyage to any port outside India,
- (xii) exempt any tobacco from the whole or any part of the duty imposed by this Act,
- (xiii) authorise the Central Board of Revenue or Collectors appointed for the purposes of this Act to provide by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section

(3) In making rules under this section the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees and that the article in respect of which any such breach is committed shall be confiscated

Declaration

It is hereby declared that it is expedient in the public interest that the provisions of clauses 6, 7, 8, 9, 10, 11, 13 and 14 of this Bill shall have immediate effect under the Provisional Collection of Taxes Act 1931. XVI of 1941.

THE SCHEDULE

(See section 3)

Description of tobacco		Rate of duty
PART I		
<i>Unmanufactured</i>		
I— VIRGINIA TOBACCO—		Per lb Rs A
A— <i>Fire-cured—</i>		
(1) if intended for manufacture into—		
(a) cigarettes—		1 12
(i) containing more than 20 per cent weight of imported tobacco		1 4
(ii) containing 20 per cent or less than 20 per cent weight of imported tobacco		0 8
(iii) containing no imported tobacco		0 6
(b) cigars		0 6
(c) cheroots		0 2
(2) if intended for any other purpose		1 12
B— <i>Air-cured</i>		0 6
II— COUNTRY TOBACCO—		
(1) if intended for manufacture into—		
(a) cigarettes		0 6
(b) cigars		0 6
(c) cigars or cheroots		0 2
(d) hookah tobacco		0 1
(e) snuff		0 6
(2) if intended for sale as chewing tobacco, whether manufactured or merely cured		0 1
(3) if intended for any other purpose		0 6
III— STALKS, STEMS AND OTHER REFUSE OF TOBACCO—		
(1) if intended for use in the preparation of any form of manufactured tobacco		0 1
(2) if intended to be used for agricultural purposes		Nil
PART II		
<i>Manufactured</i>		
		Per hundred, Rs A
Cigars and cheroots of which the value—		
Rs A		6 0
5 0		5 0
4 0		4 0
3 0		3 0
2 0		2 0
1 0		1 0
0 8		0 8
hundred		0 4
(12) exceeds As 10 but does not exceed Rs 1 4 0 a hundred		0 2

STATEMENT OF OBJECTS AND REASONS

As explained in my Budget Speech there is urgent need for new sources of revenue, and the object of this Bill is accordingly to impose a duty of excise on tobacco.

2 With the exception of tobacco grown for the personal consumption of the grower or the members of his household, which will be exempted under the rule making power, the duty is to be leviable on all forms of tobacco, and for convenience it is in some cases to be levied on the manufactured product. The Schedule of duties is steeply graded so as to lay the tax on the various classes of consumer in proportion to their capacity to pay and is so adjusted as to entail an average increase of approximately 20 per cent in retail prices.

3 As an essential aid to the levy and collection of the duties, the Bill provides that certain operations shall be subject to licence and that a limit shall be set on the quantity of unmanufactured tobacco which may be possessed by private persons, and penalties are provided for breach of these provisions and for failure to supply necessary

4 It is intended that the Bill should come into force on the 1st April, 1943, but in order to enable the necessary organisation to be prepared and to allow of the issue of licences and the registration of stocks in readiness for that date, certain clauses of the Bill are given immediate effect by a Declaration under the Provisional Collection of Taxes Act 1931

A J RAISMAN

NEW DELHI,

The 18th February, 1943

The following Bill* was introduced in the Legislative Assembly on the 27th February, 1943 —

L A BILL No 15 OF 1943

A Bill to provide for the imposition and collection of an excise duty on vegetable product

WHEREAS it is expedient to provide for the imposition and collection of an excise duty on vegetable product

It is hereby enacted as follows —

1 (1) This Act may be called the Vegetable Product (Excise Duty) Act, 1943 Short title and extent.

(2) It extends to the whole of British India

2 In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(a) "factory" means any premises wherein vegetable product is manufactured

(b) "owner" includes any person expressly or impliedly authorised by an owner of a factory to be his agent in respect of the factory,

(c) "vegetable product" means any vegetable oil or fat which, whether by itself or in admixture with any other substance, has by hydrogenation or by any other process been hardened for human consumption

3 A duty of excise at the rate of seven rupees per hundredweight shall be levied on all vegetable product manufactured in any factory in British India and issued out of such factory on or after the 1st day of April, 1943, and shall be payable by the owner of the factory Imposition of and amount of duty

4 (1) If any duty payable under section 3 is not paid within the time fixed by a notice issued in accordance with any rules made in this behalf under this Act, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum, not exceeding double the amount of the duty unpaid, which such authority may in its discretion think it reasonable to require Recovery of duty with penalty

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section, shall be recoverable as an arrear of land revenue and shall be recoverable in addition to, and not in substitution for, any other penalty incurred under this Act.

* The Governor General has been pleased to give the section 67 of the Act the force of law by proclamation and introduction in

(3) Without prejudice to the provisions of sub section (2) when under the provisions of sub section (1) any duty is deemed to be an arrear the authority by which the notice referred to in sub section (1) was issued may direct that no issue of vegetable product shall be made and no plant machinery or material shall be removed out of the factory who owner has failed to pay the duty until the duty or the sum recoverable in lieu thereof is paid or recovered, and such direction shall have effect notwithstanding any change in the ownership of the factory

(4) Any vegetable product issued, and any plant, machinery or material removed in contravention of a direction under sub section (3) shall be liable to confiscation and any person concerned in such issue or removal shall be punishable with fine which may extend to two thousand rupees

5 (1) No vegetable product shall be issued out of any factory except in accordance with the provisions of rules made under section 8 regulating such issue, or until such rules are made, in accordance with the general or special orders of the Central Government Issue from factory

(2) If any vegetable product is issued out of any factory contrary to the provisions of sub section (1), any person concerned in such issue shall be punishable with fine which may extend to one thousand rupees or to a sum equal to double the amount of the duty on the vegetable product so issued

6 The Central Government in the official Gazette, declare the

sions of the Sea Customs Act, levy of and exemption from customs duties drawback of duty, warehousing, offences and penalties confiscation and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances be applicable in regard to like matters in respect of the duty imposed by section 3 1878 to the duty on vegetable product

7 The Central Government may, by notification in the official Gazette, impose on vegetable product brought into British India from the territory of any Indian State not being territory which has been declared under section 5 of the Indian Tariff Act, 1934, to be foreign territory for the purposes of that section, a duty of customs equivalent to the excise duty imposed by this Act on vegetable product manufactured in British India, or prohibit absolutely, or with such exceptions as it thinks fit, the bringing of vegetable product into British India from the territory of any specified Indian State Power of Central Government to impose a duty of customs or to prohibit import

8 (1) The Central Government may, by notification in the official Gazette, make rules— Power to make rules

(a) imposing on owners of factories the duty of furnishing returns and keeping records and books and prescribing the form of such returns, records and books and the particulars to be contained therein, and the manner in which the same are to be verified,

VIII of
1878

XXVII of
1934

- (b) regulating the issue of vegetable product out of factories,
- (c) providing for the assessment and collection of the duty, the issue of notices requiring payment, the authority to whom the duty shall be payable and the recovery of arrears,
- (d) specifying the manner in which directions under the provisions of sub section (3) of section 4 shall be made and communicated, and determining when such directions shall be deemed to become effective,
- (e) authorising and providing for the inspection of factories, and
- (f) generally for carrying into effect the provisions of this Act

(2) Such rules may provide that any breach thereof shall be punishable with fine which may extend to five hundred rupees

Provided that the breach of any rule made under clause (b) of sub section (1) shall be punishable with the punishment provided for an offence against section 5.

STATEMENT OF OBJECTS AND REASONS.

The need for additional revenue is fully explained in my Budget Speech. This Bill seeks to impose a duty of excise on "Vegetable Product"

A J RAISMAN

NEW DELHI,
The 17th February, 1943

M N KAUL

Secy to the Govt. of India

The Gazette of India

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Separate paging is given to this Part in order that it may be filed as a separate compilation

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 11th March, 1943.—

L A. BILL No. 16 of 1943

A Bill to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability

WHEREAS it is expedient to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability,

It is hereby enacted as follows —

1. (1) This Act may be called the War Injuries (Compensation Insurance) Act, 1943

Short title
extent and
commence-
ment

(2) It extends to the whole of British India, and applies also to British subjects in any part of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) 'employer', 'adult' and 'minor' have the meanings assigned to those expressions in the Workmen's Compensation Act, 1923,

(b) 'the Fund' means the War Injuries Compensation Insurance Fund constituted under section 10,

(c) 'gainfully occupied person' and 'war injury' have the meanings assigned to those expressions in the War Injuries Ordinance, 1941,

(d) 'partial disablement' means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in

* The Governor General has been pleased to give the previous sanction required by the proviso to section 126A of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill

any employment in which he was engaged at the time the injury was sustained and where the disablement is of a permanent nature such disablement as reduces his earning capacity in any employment which he was capable of undertaking at that time

Provided that every injury specified in items 2 to 9 of the Schedule shall be deemed to result in permanent partial disablement,

- (c) 'prescribed' means prescribed by rules made under section 18,
- (f) total disablement means such disablement whether of a temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time the injury was sustained

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from an injury specified in item 1 of the Schedule or from any combination of injuries specified in items 2 to 9 of the Schedule where the aggregate percentage of disability as specified in that Schedule against those injuries amounts to one hundred per cent

- (g) the 'Scheme' means the War Injuries Compensation Insurance Scheme referred to in subsection (1) of section 6
- (h) 'wages' means wages as defined in the Workmen's Compensation Act, 1923 and monthly wages' has the meaning assigned to that expression by section 5 of the Workmen's Compensation Act, 1923 and shall be calculated for the purposes of this Act in the manner laid down in that section,
- (i) 'workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is employed in any of the employments specified in section 5

Compensation payable under the Act by whom and how payable

3 (1) There shall, subject to such conditions as may be specified in the Scheme be payable by an employer, in respect of a war injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation, in addition to any relief provided under the War Injuries Ordinance, 1941, of the amount and kind provided by section 4

(2) The compensation payable under this Act shall be payable in accordance with the provisions made in this behalf contained in the Scheme

Amount of compensation

4 (1) The compensation payable under this Act shall be as follows namely—

(a) where death results from the injury—

(i) in the case of an adult—the amount payable in a like case under the Workmen's Compens

VIII of 1923

sation Act, 1923, reduced by seven hundred, and twenty rupees, and

(u) in the case of a minor—two hundred rupees,

(t) where permanent total disablement results from the injury—

(i) in the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923, reduced by one thousand and eight rupees, and

(u) in the case of a minor—one thousand two hundred rupees

VIII of 1923.

(c) where permanent partial disablement results from the injury—

(i) in the case of an injury specified in the Schedule—such percentage of the compensation, which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of disablement,

(ii) in the case of an injury not specified in the Schedule—the percentage of such compensation specified in the Schedule for a disablement held by a competent medical authority acting under the Scheme made under the War Injuries Ordinance 1941 to be of corresponding degree,

VII of 1941

(iii) where more injuries than one are sustained—the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disability had resulted from the injuries,

(d) where temporary disablement, whether total or partial, results from the injury—

(i) in the case of an adult—the half monthly payments payable in a like case under the Workmen's Compensation Act 1923 reduced in each case by seven rupees, and

(ii) in the case of a minor—the half monthly payments payable in a like case under the Workmen's Compensation Act, 1923

VIII of 1923

VIII of 1923

(2) Where the monthly wages of a workman are more than three hundred rupees, the compensation payable under this Act shall be the amount payable under the provisions of sub-section (1) in the case of a workman whose monthly wages are more than two hundred rupees

5 (1) The workmen to whom this Act applies are—

Workmen to whom the Act applies

(a) workmen employed in any employment or class of employment to which the Principal Services (Maintenance) Ordinance 1941, has been declared under section 3 of that Ordinance to apply, whether such declaration is or is not subsequently revoked,

XI of 1941

- (b) workmen employed in any factory as defined in clause (f) of section 2 of the Factories Act 1934
- (c) workmen employed in any mine within the meaning of the Indian Mines Act 1923
- (d) workmen employed in any major port
- (e) workmen employed in any employment specified in this behalf by the Central Government by notification in the official Gazette

XXV of 1934

IX of 1923

(2) This Act shall not apply to workmen employed by the Crown nor unless the Central Government otherwise orders by notification in the official Gazette to workmen employed by a Federal railway

War Injuries
Compensation
Insurance
Scheme

6 (1) The Central Government shall by notification in the official Gazette put into operation a scheme to be called the War Injuries Compensation Insurance Scheme whereby provision is made for all matters necessary to give effect to the purposes of this Act and whereby the Central Government undertakes in relation to employers of workmen to whom this Act applies the liabilities of insuring such employers against liabilities incurred by them to workmen under this Act and the Scheme

(2) The Scheme shall secure that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Central Government

(3) The Scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein

(4) The Scheme may be amended at any time by the Central Government

(5) Without prejudice to the generality of the provisions of sub section (1) the Scheme may—

- (a) make provisions regulating the payment of the compensation payable under this Act and the Scheme including provision for punishment by fine not exceeding one thousand rupees for the contravention of any requirement of the Scheme
- (b) specify conditions or circumstances which will disentitle a workman to the compensation payable under this Act and make it an express or implied condition of any policy of insurance issued under the Scheme that the payment of compensation in defiance of such specifications is not covered by the policy
- (c) provide for cases in which an employer has of his own accord undertaken a part or the whole of the liability imposed by this Act
- (d) provide for the final assessment of the total premium due on a policy of insurance under the Scheme as a percentage of the total wages bill of an employer for the twelve months preceding the termination of the present hostilities and for the assessment of the total premium due on a policy

which has ceased to be in force before the termination of the present hostilities owing to the employer having gone out of business,

- (e) provide for the recovery from an employer of the total premium due on a policy of insurance including provision for its recovery by periodic advance payments of an amount based on a percentage of his total wages bill for any prescribed period the separate funding of the payments so made by each employer and the eventual adjustment of the total premium as finally assessed against the total of such periodic payments

Provided that the first of such periodic payments shall be an amount representing not more than eight annas per hundred rupees of the wages bill for the period by reference to which the amount of the payment is fixed

Provided further that such periodic payments shall not be more frequent than once in each quarter of a year

- (f) provide for the repayment by the Central Government to an employer who has made a payment of compensation for which he is liable under this Act of the amount so paid within the limits imposed by this Act and the Scheme

7 The Central Government may employ or authorise the employment of any person or firm to act as its agents for any of the purposes of this Act and may pay to persons or firms so employed such remuneration as the Central Government thinks fit

Employment of agents by the Central Government

Provided that no person or firm shall be so employed unless that person or firm is a member of an association prescribed in this behalf

8 (1) Every employer of workmen to whom this Act applies or is subsequently made applicable shall before such date as may be prescribed or before the expiry of such period as may be prescribed after his having first become such an employer take out a policy of insurance issued in accordance with the Scheme whereby he is insured until the termination of the present hostilities or until the date if any prior to the termination of the present hostilities at which he ceases to be an employer to whom this section applies against all liabilities imposed on him by this Act

Compulsory insurance

(2) Whoever contravenes the provisions of sub section (1) or having taken out a policy of insurance as required by that sub section fails to make any payment by way of premium thereon which is subsequently due from him in accordance with the provisions of the Scheme shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues

9 (1) After the date on which the Scheme is put into operation no person shall except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme carry on the business of

Prohibition of certain insurance business.

insuring employers in British India against the liabilities for insurance against which the Scheme provides

(2) Nothing in sub section (1) applies to any policy of insurance entered into before the date on which the Scheme is put into operation and current after that date or to any policy of insurance covering liabilities under taken in excess of the liabilities imposed by this Act

(3) Whoever contravenes the provisions of sub section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues

War Injuries
Compensation
Insurance
Fund

10 (1) The Central Government shall establish a fund for the purposes of this Act to be called the War Injuries Compensation Insurance Fund into which shall be paid all sums received by the Central Government by way of insurance premiums under the Scheme or by way of payments made on composition of offences under section 15 or by way of expenses or compensation awarded by a Court under section 545 of the Code of Criminal Procedure 1898 out of any fine imposed under this Act, or by way of penalties imposed under the Scheme and out of which shall be paid all sums required for the discharge by the Central Government of any of its liabilities under this Act or the Scheme or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme or for the payment by the Central Government of the costs of administering the Scheme v of 1938.

(2) If at any time the sum standing to the credit of the Fund is less than the sum for the time being necessary for the adequate discharge of the purposes of the Fund the Central Government shall pay into the Fund as an advance out of general revenues such amount as the Central Government considers necessary

(3) If at any time the amount standing to the credit of the Fund exceeds the sum which in the opinion of the Central Government is likely to be required for the making of payments out of the Fund the excess shall be paid into general revenues

(4) The Central Government shall prepare in such form and manner as may be prescribed and shall publish either annually or at such shorter intervals as may be prescribed an account of all sums received into and paid out of the Fund

Power of
Central
Government
to obtain
information

21 (1) Any person authorised in this behalf by the Central Government may for the purpose of ascertaining whether the requirements of this Act and of the Scheme have been complied with —

(a) require any employer to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary and

(b) at any reasonable time enter any premises or upon any property under the control of an employer and require any person found therein or thereon,

whom he reasonably believes to be in possession of information relevant to his investigation to furnish to him such information as he may reasonably think necessary

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any request made thereunder shall in respect of each occasion on which any such obstruction or failure takes place be punishable with fine which may extend to one thousand rupees

(3) Whoever in purporting to comply with his obligations under this section knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees

12 (1) Without prejudice to the provisions of sub section (2) of section 8 where any person has failed to insure as or to the full amount required by this Act and the Scheme and has thereby evaded the payment by way of premium of any money which he would have had to pay in accordance with the provisions of the Scheme but for such failure an officer authorised in this behalf by the Central Government may determine the amount payable of which has been so evaded and the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub section (2)

Recovery of premium unpaid

(2) Any sum payable in accordance with the provisions of the Scheme by way of premium on a policy of insurance issued under the Scheme and any amount determined as payable under sub section (1) shall be recoverable as an arrear of land revenue

(3) Any person against whom a determination is made under sub section (1) may within the prescribed period appeal against such determination to the Central Government whose decision shall be final

13 Where an employer has failed to pay within a reasonable time any compensation which he is liable under this Act to pay, an officer authorised in this behalf by the Central Government may order payment of the compensation to be made out of the Fund and may require the employer to pay by way of penalty a sum not exceeding twice the amount of the compensation in respect of which default was made, and such penalty shall be recoverable as an arrear of land revenue

Default in payment of compensation

14 No prosecution for any offence punishable under this Act shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government

Limitation of Prosecutions

15 Any offence punishable under sub section (2) of section 8 may, either before or after the institution of the prosecution be compounded by the Central Government or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority as the case may be thinks fit

Composition of offences

16 (1) No suit prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act

3 The Bill imposes on employers of essential services, of factory and mine labour, in major ports, and other employments to be specified, an obligation to pay compensation in respect of war injury to their workmen, calculated to amount to the difference between the amount paid by Government under the War Injuries Scheme and the amount which would have been payable under the Workmen's Compensation Act if the war injury had given a right to compensation thereunder. This will mean additional payments in respect of labour drawing roughly over Rs 24 a month.

4 Many employers are prepared to undertake the extra liability, but the liability may prove either an embarrassment or an impossibility in the case of a factory which might be seriously damaged by enemy action, unless insurance can be taken out to cover the risk. It is understood that few insurance companies are now prepared to cover such risks although in a few cases insurance in this matter has been effected. The Bill therefore provides for compulsory insurance with the Central Government, of the liability referred to above, by employers throughout British India.

5 A provision has also been made to extend the scheme of insurance to employers in States provided that provisions substantially corresponding to the provisions of this Bill are made in that State.

6 The Bill follows closely the War Risks (Goods) Insurance Ordinance and the War Risks (Factories) Insurance Ordinance.

NEW DELHI,

The 5th March, 1943

B R AMBEDKAR

M. N. KAUL,

Secy to the Govt. of India

The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, MARCH 20, 1943

Separate paging is given to this Part in order that it may be filed as a separate compilation

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules

GOVERNMENT OF INDIA

LEGISLATIVE DEPARTMENT

The following Bill was introduced in the Council of State on the 10th March, 1943 —

C OF S BILL No 1 of 1943

A Bill further to amend the Indian Income tax Act, 1922

WHEREAS it is expedient further to amend the Indian Income tax Act, 1922 (XI of 1922) for the purpose hereinafter appearing,

It is hereby enacted as follows —

1 *Short title and commencement* — (1) This Act may be called the Indian Income tax (Amendment) Act, 1943

(2) It shall come into force at once

2 *Amendment of section 30 (1) Act XI of 1922* — In sub section (1) of section 30 of the Indian Income tax Act, 1922 (XI of 1922), after the words and comma 'or denying his liability to be assessed under this Act, the following shall be inserted —

or denying his liability to make or to have made a deduction under section

3 *Amendment of section 30 (2), Act XI of 1922* — In sub section (2) of section 30 of the Indian Income tax Act 1922 (XI of 1922) after the words thirty days the following shall be inserted —

of an intimation from an Income tax Officer that a person should deduct or should have deducted tax under any of the provisions of section 18 or

4 *Amendment of section 31, Act XI of 1922* — In sub section (3) of section 31 after sub clause (g) the following shall be inserted —

or, in the case of an appeal from an intimation from an Income tax Officer that a person should deduct or should have deducted tax under any of the provisions of section 18,

(h) confirm cancel or vary such intimation

STATEMENTS OF OBJECTS AND REASONS

The Indian Income tax Act deems a person who fails to deduct tax in accordance with the provisions of section 18 to be an assessee in default with the consequences that he becomes liable to make the payment of tax and may be subjected to a penalty. The Act gives him no right of appeal where he disputes his liability to make a deduction. Income tax Officers who consider that a deduction should be made or should have been made so intimate with the threat of penalty. The Act contains no machinery by which a person who receives such an intimation and who has been advised or considers he is

liable to deduct tax can have the dispute adjudicated upon. It is therefore necessary to provide such machinery by giving any such person a right of appeal.

R H PARKER

NEW DELHI,

The 1st February, 1943

G H SPENCE,

Secy to the Govt of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 17th March, 1943 —

L A BILL No 17 of 1943

A Bill further to amend the Indian Tea Control Act 1938

WHEREAS it is expedient further to amend the Indian Tea Control Act 1938 (VIII of 1938) for the purposes hereinafter appearing,

It is hereby enacted as follows —

1 *Short title and commencement* — (1) This Act may be called the Indian Tea Control (Amendment) Act, 1943

(2) It shall be deemed to have taken effect immediately before the expiration of the 31st day of March, 1943

2 *Amendment of section 1 Act VIII of 1938* — In section 1 of the Indian Tea Control Act, 1938 (hereinafter referred to as the said Act) for sub section (4) the following sub section shall be substituted, namely —

(4) It shall remain in force only up to the end of the twenty four months commencing on the 1st day of April subsequent to the termination of the present hostilities

3 *An endment of section 2 Act VIII of 1938* — In section 2 of the said Act in sub clause (i) of clause (h) after the words and figures 'and Chapter IV' the words and in the Schedule shall be inserted

4 *Amendment of section 3, Act VIII of 1938* — In section 3 of the said Act, for sub sections (2) and (3) the following sub sections shall be substituted, namely —

(2) Members nominated or elected under sub section (1) shall hold office for the duration of this Act

(3) The Committee shall be a body corporate by the name of the Indian Tea Licensing Committee, having perpetual succession and a common seal, with power to acquire and hold property and to contract, and shall by the said name sue and be sued

5 *Amendment of section 4 Act VIII of 1938* — In section 4 of the said Act in sub section (2) for the words following the words 'the Central Government may' the following shall be substituted, namely —

in the case of an elected member, nominate a successor chosen to represent the body entitled to make the first election under section 3 and in the case of a nominated member, nominate a successor on the recommendation of the authority or body entitled to make the first nomination under section 3, or if such recommendation is not made within two months without such recommendation

6 *Insertion of new section 5A in Act VIII of 1938* — After section 5 of the said Act the following section shall be inserted, namely —

'5A *Power of Central Government to appoint additional member of Committee to act as chairman* — Notwithstanding anything elsewhere contained in this Act the Central Government may appoint any person to be an additional member of, and to act as chairman of the Committee and on such appointment

* The previous consent necessary under sub section (1) of section 106 of the Government of India Act, 1935, for the enactment of the provisions of this Bill amending Chapter III of the Indian Tea Control Act, 1938 has been given by the Governors of the Provinces concerned.

being made the chairman of the Committee elected under section 5 shall cease to exercise the functions of chairman.

7 *Amendment of section 10 Act VIII of 1938*—In section 10 of the said Act in clause (b) the words 'the term of office of members of the Committee and' shall be omitted and after the words "by which members" the words 'of the Committee' shall be inserted.

8 *Amendment of section 11 Act VIII of 1938*—In section 11 of the said Act—

(a) in clause (b) after the word "vessel" in both places where it occurs the words 'or aircraft' shall be inserted.

(b) to clause (c) the word 'or' shall be added, and after that clause the following clause shall be added namely—

(d) exported by a Red Cross Society with the previous sanction of the Central Government within the limits prescribed in this behalf."

9 *Amendment of section 12 Act VIII of 1938*—In section 12 of the said Act—

(a) in sub section (2) after the word "tea" the words "or tea seed" shall be inserted

(b) after sub section (3) the following sub section shall be added namely—

(4) No tea or tea seed shall be taken by land sea or air out of British India to any place in India other than the States of Travancore Mysore, Cochin Tripura and Mandi unless covered by a permit issued by or on behalf of the Committee

Provided that this sub section shall have effect only if the Central Government by notification in the official Gazette so directs and the Central Government may by the same or a subsequent notification direct that the sub section shall not have effect in respect of tea or tea seed taken out of British India to any place specified in the notification."

10 *Amendment of section 14, Act VIII of 1938*—In section 14 of the said Act—

(a) in sub section (1) after the words "on application made" the words "within the prescribed time and accompanied by the prescribed particulars" shall be inserted

(b) in sub section (2) after the word "Schedule" the words figures and letter "or as revised by the Central Government under section 14A" shall be inserted

11 *Insertion of new section 14A in Act VIII of 1938*—After section 14 of the said Act the following section shall be inserted namely—

14A *Power of Central Government to raise crop basis*—The crop basis of a tea estate as determined or re-determined by the Committee may be revised by the Central Government if the Central Government is satisfied that the Committee in determining or re-determining it acted upon information which was either incorrect or deceptive."

12 *Amendment of section 15 Act VIII of 1938*—To sub section (1) of section 15 of the said Act the following provision shall be added, namely—

'Provided that for the purpose of restricting in any year the amount of tea exported from British India the Central Government may direct that the quota shall, for the purpose of this sub section, be deemed to be reduced by such proportion as is necessary to effect the desired restriction."

13 *Amendment of section 16 Act VIII of 1938*—In section 16 of the said Act, in sub section (3), after the word "quota" the following shall be inserted namely—

"or of the quota as deemed to be reduced in accordance with any direction made under the proviso to sub section (1) of section 15."

and to the said sub section the following provision shall be added namely—

"Provided that if the Central Government has at any time decided that it desirable to restrict the export of tea from British India the Committee may, the general or special provisions of the Central Government were exported tea."

14 Amendment of section 17 Act VIII of 1938—In section 17 of the said Act—

(a) in sub section (2) after the words 'under this Act' the words 'or in respect of which an export licence would but for the operation of a direction made under the proviso to sub section (1) of section 15 have been obtainable' shall be inserted

(b) for sub section (2A) the following sub sections shall be substituted namely—

(2A) Where, in pursuance of sub section (1) or sub section (2) of section 7 the owner of a tea estate receives a right to obtain export licences for a further quantity of tea he may within one month from the date of the order whereby he receives such right apply to the Committee for a special export licence covering that further quantity, and the Committee shall, on receipt of the requisite fee if any issue a special licence accordingly

(B) A person to whom a special export licence has been issued under sub section (2) or sub section (2A) may transfer the special export licence with all the rights conferred thereby within a period of six months from the date at which it was granted to a person or persons nominated by him, but a licence so transferred shall not be further transferable

(c) in sub section (3)—

(i) the words and figures in the case of a special export licence issued in the year 1938 up to the 30th day of June of that year and in the case of a special export licence issued in any subsequent year shall be omitted and for the words 'May of the year' the words 'March of the financial year' shall be substituted,

(ii) the proviso shall be omitted

(d) in sub section (4) the words and figures "or under the Tea Control Act 1933 as the case may be" shall be omitted

(e) after sub section (4) the following sub section shall be added, namely—

(A) Notwithstanding anything contained in the foregoing sub sections the Committee may postpone for so long as the Central Government may require the issue of any special export licence

15 Amendment of section 19, Act VIII of 1938—In section 19 of the said Act—

(a) in sub-section (2) after the word 'carnage' the words 'or shall be taken by land' shall be inserted

(b) in sub section (3) after the word "tea" the words "or tea seed" shall be inserted

16 Amendment of section 20 Act VIII of 1938—In section 20 of the said Act in sub section (1), the words 'to enable it to discharge its duties under this Chapter' shall be omitted

17 Amendment of section 23 Act VIII of 1938—In section 23 of the said Act—

(a) in clause (b) after the word 'tea' the words 'or tea seed' shall be inserted

(b) after clause (b) the following clauses shall be inserted namely—

(ba) prescribing limits for the purposes of clause (d) of section 11

(bb) prescribing the time and the particulars referred to in sub section (1) of section 14

18 Insertion of new section 25A in Chapter II Act VIII of 1938—In Chapter II of the said Act after section 25 the following section shall be inserted namely—

25A Power of Central Government to make orders—If in pursuance of any scheme for the control of import of Indian tea into the United Kingdom or any other country the Central Government considers it necessary or expedient to do it may by order direct the Committee to apportion the requirement of the United Kingdom or such other country among the tea estates in accordance with such principles and in such manner as may be laid down in the order and to grant such export licences or special export licences as may be necessary

for giving effect to the arrangements made under such scheme, and the Committee shall comply with any such order.

19 Amendment of section 26 Act VIII of 1938.—In section 26 of the said Act for the figures '1913', '1933' in both places where they occur and '1931', respectively, the figures '1913', '1918' and '1936' shall be substituted.

20 Amendment of section 27, Act VIII of 1938.—In section 27 of the said Act,—

(a) in sub section (1) for the words 'after the words 'shall not exceed' the following shall be substituted, namely—

"such area as will bring the total area of the land planted with tea in British India up to one half of one per cent over the total area of the land which would have been planted with tea in British India on the 31st day of March 1913 had the extensions of plantation made in the two periods of five years subsequent to the 31st day of March, 1933, each increased the area in British India planted with tea at the beginning of each such period by one half of one per cent.

(b) in sub section (2) —

(i) for the words following the words 'as near as may be', the following shall be substituted, namely—

"such area as will bring the total area of the land planted with tea in the Province up to one half of one per cent over the total area of the land which would have been planted with tea in the Province on the 31st day of March, 1913, had the extensions of plantation made in the two periods of five years subsequent to the 31st day of March 1933, each increased the area in the Province planted with tea at the beginning of each such period by one-half of one per cent.

(ii) the following proviso shall be added, namely—

"Provided that the Committee may vary the total area so determined for any Province in order to increase or diminish for another Province the area in respect of which such permissions may be granted by an amount corresponding to the extent to which the area in the first mentioned Province has been diminished or increased."

(c) in sub section (3) for the words "after the commencement of this Act" the words brackets and figures "after the commencement of the Indian Tea Control (Amendment) Act 1938" shall be substituted and the following words shall be added, namely—

"and shall in like manner publish any subsequent variation of such total area."

(d) sub section (4) shall be omitted.

21 Amendment of section 28 Act VIII of 1938.—In section 28 of the said Act—

(a) in sub section (1) for the figures "1938" the figures "1913" shall be substituted and for the words "not later than six months from the commencement of this Act", the following shall be substituted, namely—

"not later than six months from the commencement of the Indian Tea Control (Amendment) Act 1938."

(b) after sub section (1) the following sub section shall be inserted, namely—

"(1A) The Committee may require an applicant to supply such information as it thinks necessary to enable the Committee to deal with the application."

(c) in sub section (2) after the word and figures "section 27" the words "and to any rules made in this behalf by the Committee" shall be inserted and the following provisions shall be added, namely—

"Provided that permission shall not be granted in the case of any tea estate owned by a limited liability company if the area planted with tea in the estate exceeds three hundred acres or in the case of any tea estate owned by an individual proprietor or partnership if the area planted with tea in the estate exceeds one hundred and fifty acres."

Provided further that the Committee may, despite the limits in section 27 grant such permission to the holder of any tea estate in the following cases—

22 Amendment of section 29 Act VIII of 1938 —In section 29 of the said Act —

(a) in sub section (1) —

(i) for the figures 1933 the figures 1943 shall be substituted

(ii) in clause (a) after the word 'through' the words 'circumstances due to existing war conditions or through' shall be inserted

(iii) the following Explanation shall be added namely —

Explanation —Land taken for purposes connected with the prosecution of war on which tea bushes have been allowed to remain for protective purposes though no longer cultivated shall be deemed for the purposes of this sub section to be incapable of carrying or no longer to carry tea.

(b) in sub section (2) in the proviso for the words the area of the same tea estate the words the same or an adjacent district and shall belong to the same or an adjacent tea estate shall be substituted

(c) after sub section (3) the following sub section shall be added namely —

(4) If any land falling within the Explanation to sub section (1) is subsequently restored to the tea estate from which it was subtracted the owner of the estate shall either uproot the tea planted thereon or uproot any tea planted by him in pursuance of a permission granted under sub section (2)

23 Amendment of section 30 Act VIII of 1938 —In section 30 of the said Act in the proviso to sub section (1) for the words and figures 'upon the 31st day of March 1943' the words 'at the termination of this Act' shall be substituted

24 Insertion of new Chapter VI and section 40 in Act VIII of 1938 —After section 39 of the said Act the following Chapter and section shall be added namely —

CHAPTER VI

SUSPENSION OF OPERATION OF ACT

40 Suspension of operation of Act —(1) If the Central Government is satisfied that an emergency has arisen rendering it necessary for the security of India that certain of the restrictions imposed by this Act should cease to be imposed the Central Government may by notification in the official Gazette suspend or relax to a specified extent either indefinitely or for such period as may be specified in the notification the operation of all or any of the provisions of this Act

(2) Where the operation of certain provisions of this Act has under sub section (1) been suspended or relaxed indefinitely such suspension or relaxation may at any time while this Act remains in force be removed by the Central Government by notification in the official Gazette

25 Substitution of new Schedule for the Schedule to Act VIII of 1938 —For the Schedule to the said Act the following shall be substituted namely —

THE SCHEDULE

[See section 11 (2)]

Principles to be followed in determining the Crop Basis of a Tea Estate

1 Where a tea estate has before the 1st day of April 1943 received an export quota under this Act the crop basis of the estate for the financial year beginning on that date or for any subsequent financial year shall be the highest crop basis assigned to the estate under this Act for any of the financial years beginning on the 1st day of April 1940 1941 or 1942 (herein referred to as the cardinal crop basis) increased by any admissible allowance of either of the following kinds namely —

(a) An allowance for young areas that is areas planted with tea on or after the 1st day of January 1926 determined in the prescribed manner in accordance with the prescribed rules

Provided that any young areas in respect of which an allowance has been made in determining the cardinal crop basis shall be excluded

(b) An allowance for low producing areas determined in the prescribed manner

Provided that any low producing areas in respect of which an allowance has been made in determining the cardinal crop basis shall be excluded

2 Where the area of a tea estate for which a crop basis has been determined is reduced or increased by the transfer to or acquisition from another tea estate of land planted with tea, the crop basis of the estate shall be reduced or increased by an amount representing as nearly as possible the contribution made by the area transferred or acquired to the crop basis of the estate of which it previously formed a part

3 Where a tea estate for which a crop basis has been determined subsequently becomes two or more separate estates the crop basis of each such separate estate shall be determined so as to represent as nearly as possible the contribution made by the area comprised in it to the total crop basis of the original estate

STATEMENT OF OBJECTS AND REASONS

The existing International Tea Agreement (1938—43), which was an agreement among the tea producers of India, Ceylon and the Netherlands Indies for regulation of the export of tea and for the control of extension of tea cultivation is due to expire on the 31st March, 1943. The Indian Tea Control Act 1938, which was passed to implement the agreement that the Central Government has entered into with the Governments of Ceylon and the Netherlands Indies to give effect to the provisions of the International Agreement is also due to expire on the same date.

2 The International Tea Committee which consists of the representatives of the tea industry in India, Ceylon and the Netherlands Indies, has recommended to the Governments of those countries that the existing Agreement may be extended beyond the 31st March, 1943, for the period of hostilities and two financial years thereafter. After full consultation with the various interests affected and the Provincial Governments as well as the Indian States concerned the Central Government have decided to give official recognition to the extended agreement. The specific consent of the Provincial Governments has also been obtained to legislation being undertaken in the Central Legislature regarding the control of extension of tea cultivation which subject falls within the Provincial Legislative List under the new Constitution.

3 There has been unanimity of opinion among the interests concerned in regard to the principle of extension of the tea control scheme which has been beneficial to the industry and also of the Indian Tea Control Act, 1938. In amending the Act, opportunity is taken to make such amendments to the existing Act as have been found either necessary or expedient as a result of the practical experience of its working. All interests and authorities concerned have also generally agreed to the proposed amendments and the draft Bill is designed to give legislative sanction to them.

4 It may be mentioned that the other parties concerned, namely, the Governments of Ceylon and the Netherlands have already agreed to adhere to the extended scheme.

NEW DELHI,
The 10th March, 1943

T S PILLAY

NOTES ON CLAUSES

Clause 1 (2)—As the Indian Tea Control Act, 1938, expires at midnight between the 31st of March and the 1st of April 1943, it is necessary that this amending Act should take effect before midnight.

Clause 2—The International Tea Committee has recommended that the International Tea Agreement should continue in operation for two clear quota years after hostilities have terminated.

Clause 3—Sub clause (i) of the definition of tea is made applicable to the Schedule.

Clause 4—It is desired to avoid elections while transport facilities are curtailed by war conditions. The Committee has been given the status of a body corporate. The subsections omitted are now spent.

Clause 5—This amendment is consequential on that made by clause 4.

Clause 6—This embodies in the Act the provisions of section 7(1) of the Defence of India Act 1939.

Clause 7—These amendments are consequential on the first amendment made by clause 4

Clause 8—Provision is made for the exemption of tea carried by aircraft for consumption during voyages and of small parcels of tea exported by a Red Cross Society

Clause 9—The first amendment clarifies the position regarding carriage of tea seed out of India. The second provides power to control the taking of tea or tea seed into Indian States that do not at present produce tea

Clause 10—(a) The amendment regularises the existing procedure for the submission of applications for export quotas

(b) This amendment is consequential on that made by clause 11

Clause 11—The new section provides a remedy in cases where through error or malpractice an incorrect crop basis has been arrived at by the Committee

Clauses 12, 13, 14(a) and 14(e)—It is probable that the export quotas will sometimes be in excess of the exportable surplus of tea, and that in the interest of India itself the amount of export licences issued may have to be temporarily reduced. These clauses provide for such a contingency

Clause 14 (b)—The first new subsection provides for those cases in which a revision during the year of a crop basis entitles an estate owner to export licences for an increased amount of tea. The second subsection reproduces the existing subsection (2A) with small necessary modifications

(c) Special licences are made current for the whole of the financial year in which they are issued

(d) The words removed are spent

Clause 15—Sub clause (a) introduces the necessary reference to carriage by land while sub clause (b) introduces the necessary reference to tea seed

Clause 16—Certain restrictive words are removed

Clause 17—The amendments are consequential on those made in clauses 9 and 10(a)

Clause 18—This embodies in the Act the provisions of section 7(2) of the Defence of India Act 1938 and has been amplified to cover exports of tea to countries other than the United Kingdom

Clause 19—The changes are necessitated by the continuation of the Act

Clause 20 sub clauses (a) and (b)—The recommendations of the International Tea Committee as to the extent to which tea cultivation may be increased have been embodied and provision has been made for enabling one Province to benefit to the extent to which another Province has failed to utilise its rights in the matter of extending tea cultivation

Sub clause (c)—The first change is consequential on the continuation of the Act. The second is consequential on the provision made in the proviso to the preceding subsection for altering the total area determined for a Province after it has once been notified

Sub clause (d)—The subsection omitted is reproduced in the next section by clause 21 (c)

Clause 21 (a)—The amendments are consequential on the continuation of the Act

(b) This gives the Committee power to secure the information it needs

(c) This replaces in a more suitable position the provisions of section 27 (4)

Clause 22—Provision is made for land destroyed or taken over in the course of war operations. In some cases tea bushes are deliberately kept on such land for tactical reasons though they no longer contribute to the output of tea. This clause introduces amendments enabling such cases to be dealt with

Clause 23—The amendment is consequential on the continuation of the Act

Clause 24—A power exercisable in emergencies similar to that given to suspend the control of rubber is given to the Central Government

Clause 25—The Schedule has been recast with a view to clarification

M N KAUL
Secy to the Govt of India

The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, MARCH 27, 1943

Separate pricing is given to this Part in order that it may be filed as a separate compilation.

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 20th March, 1943 —

1. A Bill No 18 of 1943

A Bill further to amend the Trade Marks Act, 1940.

WHEREAS it is expedient further to amend the Trade Marks Act, 1940 (V of 1940), for the purposes hereinafter appearing;

It is hereby enacted as follows —

1. *Short title and commencement.*—(1) This Act may be called the Trade Marks (Amendment) Act, 1943

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint

2. *Amendment of section 1, Act V of 1940*—In section 4 of the Trade Marks Act, 1940 (hereinafter referred to as the said Act),—

(a) in sub section (1), for the words "at the Patent Office" the words "at Bombay" shall be substituted, and the words "except those entered in the Bombay Register under Chapter IX" shall be omitted

(b) in sub section (2), for the words "the Controller of Patents and Designs" the words "an officer appointed by the Central Government" shall be substituted, and the words "for the purposes of this Act" shall be omitted

(c) after sub section (2), the following sub section shall be inserted namely —

"(24) The Central Government may appoint a Deputy Registrar of Trade Marks to discharge under the superintendence and direction of the Registrar in relation to trade marks any function which under this Act may be discharged by the Registrar"

(d) after sub section (3) the following sub section shall be added, namely —

(4) There shall be a seal for the Trade Marks Registry"

3. *Amendment of section 16 Act V of 1940*—In section 16 of the said Act sub section (2) for the words "Patent Office" the words "Trade Marks Registry" shall be substituted

4. *Amendment of section 53, Act V of 1940*—In section 53 of the said Act sub section (1) the words "or the Bombay Registrar, as the case may be," shall be omitted

5. *Amendment of section 56 Act V of 1940*—In section 56 of the said Act sub section (1), for the words "Patent Office" the words "Trade Marks Registry" shall be substituted

6. *Omission of sections 63 and 63A from Act V of 1940*—The said sections of the said Act shall be omitted

7. *Substitution of new section for section 61, Act V of 1940*—For section 61 of the said Act the following section shall be substituted, namely—

'64 *Restrictions on registration of textile goods*—(1) In respect of textile goods being piece goods—

(a) no mark consisting of a line heading alone shall be registrable as a trade mark,

(b) a line heading shall not be deemed to be adapted to distinguish

(c) the registration of a trade mark shall not give any exclusive right to the use of a line heading

(2) In respect of any textile goods the registration of letters or numerals or any combination thereof shall be subject to such conditions and restrictions as may be prescribed

8 *Substitution of new section for section 65 Act V of 1940*—For section 65 of the said Act the following section shall be substituted namely—

'65 *Refused Textile Marks List*—Trade marks in respect of textile goods of which registration has been refused shall be entered by the Registrar in a list called the Refused Textile Marks List and the said list shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed

9 *Amendment of section 66 Act V of 1940*—In section 66 of the said Act in sub section (2) the words and the Bombay Registrar shall be omitted

10 *Amendment of section 69, Act V of 1940*—In section 69 of the said Act the words or the Bombay Registrar shall be omitted and the following proviso shall be added to the section namely—

Provided that nothing in this section shall be construed as affecting the right if any of the proprietor of a trade mark containing any such Arms device emblem or title to continue to use such trade mark

11 *Amendment of section 74 Act V of 1940*—In section 74 of the said Act—

(a) in sub section (2), for the words Patent Office the words Trade Marks Registry shall be substituted,

(b) sub section (3) shall be omitted

12 *Insertion of new section 74A in Act V of 1940*—After section 74 of the said Act the following section shall be inserted, namely—

74A *Costs of Registrar in proceedings before High Court*—In all proceedings under this Act before a High Court the costs of the Registrar shall be in the discretion of the High Court but the Registrar shall not be ordered to pay the costs of any of the parties

13 *Amendment of section 75, Act V of 1940*—In section 75 of the said Act in sub section (1) for the words Patent Office the words Trade Marks Registry shall be substituted

14 *Amendment of section 76 Act V of 1940*—In section 76 of the said Act in sub section (1) the words "or the Bombay Registrar shall be omitted

15 *Amendment of section 84, Act V of 1940*—In section 84 of the said Act in sub section (2)—

(a) in clause (e) the words 'the Textile Marks Records' shall be omitted and for the word Lists the word 'List' shall be substituted

(b) clause (r) shall be omitted

16 *Addition of new section 86 to Act V of 1940*—After section 85 of the said Act the following section shall be added namely—

'86 *Proceedings at Patent Office and the Bombay Registry to be deemed to have been taken at Trade Marks Registry*—On the commencement of the Trade Marks (Amendment) Act 1943, all applications made and all acts done under this Act before that time at the Patent Office or the Bombay Registry shall be deemed to have been made and done at the Trade Marks Registry Bombay and shall have effect as if made or done under this Act as amended by the Trade Marks (Amendment) Act 1943

STATEMENT OF OBJECTS AND REASONS

The Trade Marks Act 1910 (X of 1910) as amended in 1911 provided for establishment of two independent Registries at Calcutta and Bombay with jurisdictions of the two Registries divided on a territorial basis. Experience has shown, however, several grave administrative difficulties in working the Act on account of the existence of dual authorities in respect of textile marks. It has been found necessary in the interests of sound practical administration to centralise registration of both textile and non textile trade marks at one centre under the jurisdiction of a single authority. The present Bill is intended to give effect to the above proposal as well as to remove a few minor defects in the Act.

T S PILLAY.

NEW DELHI,

15th March, 1943

Notes on clauses

Clause 2.—The amendments made by this clause are all designed to give effect to the chief purpose of the Bill the transfer of the main office for the registration of trade marks from the Patent Office at Calcutta to a Trade Marks Registry at Bombay and the transfer of the superintendence of registration from the Controller of Patents and Designs to a separate Registrar of Trade Marks assisted by a Deputy Registrar. A separate seal for the new Registry is provided for, to replace the seal of the Patent Office referred to in clauses 16(2) and 75(1) of the Act. The amendments made by clauses 3, 4, 5, and 9, the first part of clause 10, clause 11(a) and clauses 13, 14 and 15 are sequential amendments.

Clause 7.—The existing section 61 is reproduced with the small change necessary to make clause (d) of the section applicable to all textile goods and merely to piece goods.

Clause 8.—With the abolition of the separate register of trade marks for piece marks kept at the Bombay Registry so long as the two separate offices existed at Calcutta and Bombay, the provision made while that arrangement was in force for the keeping of two Refused Textile Marks Lists has also been abolished, but provision is made for the keeping of one such list at Bombay.

Clause 10.—The second amendment made by this clause introduces into section 69 the proviso contained in the provision of the English law upon which section 11 is based.

Clauses 11(b) and 12.—Clause 11 merely omits sub section (3) of section 11 of the Act in order that it may be re-enacted as a separate section by section 12 so as to make the provisions contained in it apply to all proceedings in a High Court, and not merely to the limited class of proceedings referred to in section 74.

Clause 16.—With the transfer of the work of registration to Bombay it is made that all work previously done in connection with registration at Calcutta and Bombay should have effect as if it had been done at Bombay under the Act as now amended.

The following Bill was introduced in the Legislative Assembly on the 24th March 1943 —

L A BILL NO 19 OF 1943

A Bill further to amend the Delhi University Act, 1922

WHEREAS it is expedient further to amend the Delhi University Act, 1922 of 1922 for the purposes hereinafter appearing it is hereby enacted as follows —

Short title.—This Act may be called the Delhi University (Amendment) Act, 1943.

(b) in sub section (4) after the words 'of an Indian University' the words 'or to the Higher Secondary Examination of the Board of Higher Secondary Education for the Delhi Province' shall be inserted

13 *Amendment of section 37, Act VIII of 1922*—In section 37 of the said Act, a sub-section (3) for the words 'a member of the University' the words "a teacher or other person in the service of the University or a College" shall be substituted

14 *Amendment of section 45 Act VIII of 1922*—In section 45 of the said Act, for the words and figures 'Indian Arbitration Act 1899' the words and figures 'Arbitration Act, 1940' shall be substituted

15 *Amendment of section 46, Act VIII of 1922*—In section 46 of the said Act, a sub-section (2) after the words 'so constituted' the following words shall be inserted namely—

'or where any such pension is granted by a College under rules which have

16 *Omission of sections 47 and*

Sections 47 and 48 of the said Act and the heading thereto shall be omitted.

17 *Substitution of new Schedule for the Schedule to Act VIII of 1922*—For the Schedule to the said Act, the following shall be substituted namely—

[See section 29 (I)]

1 *Definitions*—In these Statutes, unless there is anything repugnant in the subject or context,—

(a) 'the Act' means the Delhi University Act, 1922, as amended from time to time and "section" means a section of the Act, and

(b) "officers," "authorities," "Professors," "Readers," "Lecturers," "clerical staff" and "servants" mean, respectively, officers, authorities, Professors, Readers, Lecturers, clerical staff and servants of the University

2 *Constitution of the Court* [section 18 (I) (ix)]—(I) In addition to the officers mentioned in sub section (I) of section 18, the following persons shall be *ex-officio* members of the Court, namely—

(i) the Chief Commissioner of Delhi,

(ii) the Director General, Indian Medical Service,

(iii) the Educational Adviser to the Government of India,

(iv) the Director of Public Instruction in the Punjab,

(v) the Su

(vi) the Ch

(vii) the Cl

(viii) the Chairman of the Delhi District Board,

(ix) the Senior Officer serving in the Public Works Department under the Chief Commissioner of Delhi,

(x) the Senior Medical Officer, Delhi,

(xi) the Principals of the Intermediate Colleges in Delhi which prepare candidates for admission to the University,

(xii) the Wardens

(2) The number of graduates to be elected as members of the Court by the registered graduates from among their own body shall be twenty five

(3) [Section 18 (2)]—The number of teachers to be elected as members of the Court by the registered teachers shall be ten

(4)

or other

(5)

of State and the Legislative Assembly from among their own numbers shall be two and four respectively

(6) The Chancellor under clause (xv)

the Court other than *ex-officio*

Provided however that a member nominated or elected in his capacity as a member of a particular body or as the holder of a particular appointment shall hold office so long only within the said period as he continues to be a member of that body or the holder of that appointment as the case may be

3 *Constitution of the Executive Council* (section 21) —(1) The members of the Executive Council in addition to the Vice Chancellor, the Rector and the Treasurer shall be—

Class I—Ex officio members

- (i) the Superintendent of Education, Delhi and Ajmer Merwara,
- (ii) the Deans of the Faculties,
- (iii) the Principals of recognised Colleges,
- (iv) the Educational Adviser to the Government of India,

Class II—Other members

(v) five members of the Court elected by the Court at its annual meeting of whom at least two shall be graduates of the University elected by the registered graduates from among their own number,

(vi) two members of the Academic Council elected by the Academic Council,

(vii) two members to be appointed by the Professors of the University (salaried and honorary) from their own number,

(viii) four persons nominated by the Chancellor, of whom at least two shall be women

(2) Members other than *ex officio* members shall hold office for a period of three years

Provided that members elected by any body of persons from among their own number shall hold office so long only within the said period as they continue to be members of the body which elected them

4 *Powers of the Executive Council* [section 28 (e)]—Subject to the provisions of the Act, the Executive Council shall have the following powers, namely—

(a) to institute at its discretion, such Professorships Readerships Lectureships or other teaching posts as may be proposed by the Academic Council, and to report from the Academic Council thereon, any ship or other teaching post, chers of the University and to appoint officers clerical staff and servants in accordance with the Statutes,

(d) to appoint all examiners after considering the recommendations of the Academic Council,

(e) to delegate, subject to such conditions as may be prescribed by Regulations made by the Executive Council, its power to appoint officers, clerical staff and servants to such person or authority as the Executive Council may determine,

(f) to manage and regulate the finances accounts, investments, property and all administrative affairs whatsoever of the University, and for that purpose to appoint such agents as it may think fit;

(g) to accept bequests donations and transfers of property to the University
Provided that all such bequests donations and transfers shall be reported to the Court at its next meeting,

(h) to provide the buildings, premises, furniture, apparatus equipment and other means needed for carrying on the work of the University,

(i) after report from the Finance Committee, to enter into, vary, carry out confirm and cancel contracts on behalf of the University,

(j) to invest income, in any of the following modes—
(I) of 1882, or in

of varying such investments or to place on fixed deposit in any bank approved in this behalf by the Central Government any portion of such monies not required for immediate expenditure

5 *The Academic Council* (section 23) —(1) The members of the Academic Council, in addition to the Vice-Chancellor and the Rector shall be—

Class I—Ex-officio members

- (i) the Deans of the Faculties,
- (ii) the Principals
- (iii) the Professors and Readers
- (iv) the Librarian of the University.

Class II—Other members

(c) persons, if any, not exceeding three in number and not being teachers, appointed by the Chancellor on account of their possessing expert knowledge in such subjects of study as may be selected by the *ex-officio* members of the Academic Council

(2) The Academic Council as constituted under sub-clause (1) shall co-opt as members, teachers of the University not exceeding one-tenth of its numbers as so constituted

(3) Members other than *ex-officio* members shall hold office for a period of three years

Provided that teachers of the University co-opted as such shall hold office so long only within the said period as they continue to be teachers of the University

6 *Powers of the Academic Council* (section 23) —The Academic Council shall have the following powers, namely—

(a) to make proposals to the Executive Council for the institution of Professorships, Readerships, Lectureships or other teaching posts, and in regard to the duties and emoluments thereof,

(b) to make Regulations for, and to award in accordance with such Regulations, Fellowships, Scholarships, Exhibitions, bursaries, medals and other rewards,

(c) to recommend examiners for appointment after report from the Faculties concerned,

(d) to control the University Library, to frame Regulations regarding its use, and to appoint a Library Committee under the general control of the Academic Council to manage the affairs of the Library,

(e) to assign subjects to the Faculties,

(f) to assign teachers to the Faculties,

(g) to promote research within the University and to require reports on such research from the persons employed thereon,

(h) to provide for the inspection of Colleges and Halls in respect of the instruction and discipline therein, and to submit reports thereon to the Executive Council,

(i) to organize the teaching of the University and to control the work of teachers and Colleges

7 *The Faculties* [section 24 (2)] —(1) Each Faculty shall consist of—

(i) the heads of the Departments comprised in the Faculty,

(ii) such teachers of subjects assigned to the Faculty as may be appointed to the Faculty by the Academic Council,

(iii) such other persons as may be appointed to the Faculty by the Academic Council on account of their possessing expert knowledge in a subject or subjects assigned to the Faculty

(2) The total number of members of each Faculty shall not exceed in the case of the Faculties of Arts and Science twenty-five and in the case of any other Faculty, fifteen except with the sanction of the Chancellor given on the request of the Academic Council

of the Act

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examiners in subjects assigned to the Faculty, (d) to recommend to the Academic Council the conditions for the award of degrees, diplomas and other distinctions, (e) subject to the control of the Academic Council, to organise research in the subjects assigned to the Faculty; and (f) to deal with any matter referred to it by the Academic Council

9 *Board of Co ordination* (section 26) —There shall be a Board of Co ordination composed of the Vice Chancellor, who shall be Chairman thereof, the Rector, the Deans of the Faculties and the Registrar, to co ordinate the teaching of the University, and in particular to co ordinate the work and time tables of the various Faculties. The Faculty shall be etings He shall

(2) He shall issue the lecture lists of the University in the departments comprised in the Faculty, and shall be responsible for the conduct of teaching therein

(3) He shall have the right to be present and to speak at any meeting of any committee of the Faculty but not to vote unless he is a member of the committee

11 *The Warden* [section 35 (2)] —The appointment of a Warden shall, in the case of a Hall maintained by the University, be made by the Executive Council, and in other

12
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nances

Provided that special exemption from the provisions of this Statute may be made available to women students under conditions to be prescribed by the Ordinances

13 *Withdrawal of degrees and diplomas* (section 20) —The Court may, on the recommendation of the Executive Council by a resolution passed with the concurrence of not less than two thirds of the members voting, withdraw any degree or diploma conferred by the University

14 *Honorary degrees* [sections 4 (3) and 28 (a)] —(1) All proposals for the conferment of honorary degrees shall be made by the Academic Council to the Executive Council, and shall require the assent of the Court before submission to the Chancellor for confirmation

Provided that, in cases of urgency, the Chancellor may act on the recommendation of the Executive Council only

15 *Registered graduates* [sections 2(e) and 28 (j)] —The following persons shall, on payment of such fees as may be prescribed by the Statutes, be entitled to have their names enrolled in the register of registered graduates, namely, all graduates of the University of three years' standing and upwards

16 *Officers* [section 8 (VIII)] —There shall be the following officers, namely —
(i) two Proctors to assist the Vice Chancellor in the maintenance of discipline in the University and (ii) a Librarian for the University Library

17 *Committee of Selection* [section 28 (h)] —(1) No person shall be appointed or recognised as a teacher of the University except on the recommendation of a Committee of Selection constituted for the purpose as follows —

(i) the Vice Chancellor, (ii) the Educational Adviser to the Government of India, (iii) a member elected by the Academic Council but unconnected with any of the Colleges, and (iv) a member nominated by the Chancellor.

(2) The Committee of Selection appointed under sub clause (1) shall report to the Executive Council which shall, if it accepts the recommendation of the Committee, make the appointment or confirm the recognition as the case may be. If the Executive Council does not accept the recommendation of the Committee, it shall refer the case to the Chancellor, who shall appoint or recognise such persons as he thinks fit.

Provided that before referring the case to the Chancellor, the Executive Council shall inform the College concerned of its decision and the grounds therefor, and the College shall be entitled to make representation thereon. The representation of the College, if any, together with the decision of the Executive Council and the grounds therefor, shall be laid before the Chancellor.

(3) Nothing in this Statute shall be construed as prohibiting the University from accepting a gift for the establishment of a Professorship, Lectureship or other post, subject to a condition that the person appointed to the post shall be elected in such manner as shall have been agreed between the donor and the University.

18 *Recognition of teachers*—(1) The qualifications of recognised teachers of the University shall be such as may be determined by the Ordinances.

(2) All applications for the recognition of teachers of the University shall be made in such manner as may be laid down by the regulations made by the Executive Council in that behalf.

(3) The period of recognition of a teacher of the University as Professor, Reader or Lecturer shall be determined by the Ordinances made in that behalf. A person in the service of a College, recognised as a teacher of the University otherwise than as a Professor, Reader or Lecturer, shall continue to be recognised so long as he is in the service of the College.

(4) The Executive Council may, on a reference from the Vice-Chancellor, withdraw recognition from a teacher.

Provided that the teacher or the College concerned may, within a period of thirty days from the date of the order of withdrawal, appeal against the order to the Chancellor.

19 *Colleges*—(a) Commercial College, and (f) :
be recognised as Colleges of the University, teaching in such subjects as the Executive Council, on the recommendation of the Academic Council, may from time to time, authorise them to teach.

(2) So long as a direction made in pursuance of sub-section (2) of section 30 is in force, a College recognised as a College of the University shall provide instruction up to the level of :
namely—

English, History, Mathematics, Economics, Commerce, Geography, Philosophy, Sanskrit, Persian, Hindi and Urdu.

(3) Nothing in this Statute shall be deemed to restrict any powers conferred on the Executive Council to withdraw recognition from any College in accordance with these Statutes.

20 *The Faculties* [section 24 (1)]—(1) The following Faculties shall be included in the University, namely—

(a) the Faculty of Arts, (b) the Faculty of Science, and (c) the Faculty of Law.

(2) The Members of each Faculty other than those mentioned in sub-clause (1) of clause (1) of Statute 7 shall hold office for a period of two years.

21 *The University teachers* [section 2 (h) and Statute 1 (c)]—(1) Teachers of the University shall be—

(i) Appointed teachers of the University;

(ii) Recognised teachers of the University.

(2) Appointed teachers of the University shall be either—

(a) servants of the University paid by the University and appointed by the Executive Council as professors, Readers, or Lecturers or otherwise as teachers of the University, or

(b) persons who are not servants of the University, but who are appointed as professors, Readers or

(3) "Recognised teachers" means teachers of a recognised College.

of the University whose
are recognised shall be
used in the University
Statute 15]—(1) Appli-
hall be made in the appli-
cribed for the purpose by

regulations

(2) No graduate shall be entitled to have his name enrolled and returned in the register of registered graduates except on payment of the following fees namely—

(a) an initial fee of five rupees and (b) an annual fee of two rupees for fifteen years or a compounded fee of twenty rupees

(3) On the Registrar being satisfied that the application is in order and after receipt of the prescribed fee he shall cause the name of the applicant to be enrolled in the register

(4) The annual fee shall be payable in advance by the 1st day of December every year. If any registered graduate fails to pay the fee by that day the Registrar shall cause his name to be removed from the register

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(5) dur
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23 *Ad eundem degrees* [Statute 15 (a)]—(1) No person shall be admitted to an *ad eundem degree* unless he pays the following fee to the University namely—

egree shall be made in the
form prescribed for the pur-
or certificate on which the

not cause dispense with the
er evidence in sup-
port

tion
pass thereon the orders for the grant of an *ad eundem degree*
order, the applica-
all have powers

24 *Term of office of Vice Chancellor* [sections 11 (1) and 28 (c)]—The Vice

(b)]—There may be
one hundred rupees

per mensem for one year which may be extended on the recommendation of the De-
of the Faculty concerned for another year for the encouragement of research or or-
nal work under such conditions as the Academic Council may prescribe by Regulation

26 *University scholarships* [sections 4 (8) and (28) (b)]—(1) Two scholarships
each year of the value of twenty five rupees per mensem for students for the M.
examination and two scholarships each year of the value of twenty five rupees
per mensem for students for the M Sc shall be awarded for merit on the result of the
B A or B Sc examination

Provided that if less than two suitable candidates are available for either M.
or M Sc the scholarship or scholarships thus set free may be transferred for the
occasion to the M Sc and M A respectively but only to candidates who have been
placed in the first class

(2) Eight scholarships each year of the value of ten rupees per mensem plus the
tion fee each shall be awarded—five on the result of the Intermediate examination Faculty
of Arts and three on the result of the Intermediate examination Faculty
of Science

(5) One scholarship each year of the value of ten rupees per mensem *plus* tuition fee, shall be awarded on the results of the Intermediate examination (Arts or Science) to the best woman candidate provided she has secured at least 50 per cent of the aggregate marks in the examination.

(f) (a) Three scholarships each year of the value of ten rupees per mensem, *plus* tuition fee each, shall be awarded to students who have secured the highest percentage of marks in the Matriculation examination of any University established by law for the time being in force in British India or an examination recognised as equivalent thereto and who also satisfy the University in any supplementary examination that may be demanded by the University.

(b) Three scholarships each year of the value of ten rupees per mensem, *plus* tuition fee each shall be awarded to students who have secured the highest percentage of marks in the High School examination of the Board of Secondary Education Delhi.

27 *Endowed scholarships* [sections 4 (5) and 28 (b)] — (1) There shall be the following scholarships and medals —

(i) Harichand Puranchand Khatri Scholarship of the value of twelve rupees and annas eight per mensem awarded for one year to the best Hindu Khatri student who stands highest in the Matriculation examination or an examination recognised by the University as equivalent to the Matriculation examination held in Delhi during a — of the Delhi University Act and such — any one

(ii) — twelve rupees and — awarded for one year to the best Hindu Khatri in the Intermediate equivalent thereto, of Arts or Science larship of the value

of fifteen rupees per mensem, tenable for two years for training in higher grade electrical engineering awarded every second year to a Science graduate selected in accordance with and under conditions prescribed by regulations made in that behalf

(2) *Endowed medals* [sections 4 (8) and 28 (b)] — (i) M. Makhan Lal Gold Medal of the value of one hundred rupees awarded to the best Hindu lady candidate in the University every year

(ii) M. Bhola Nath Gold Medal of the value of one hundred rupees awarded every year to the best Hindu candidate in the B.A. examination provided he knows Sanskrit

(iii) — M. B. C. L. Medal of the value of one hundred rupees awarded

Technical education

(iv) Rai Bahadur Brijmohanlal Sahab Memorial Gold Medal awarded to the candidate who passes the examination for the degree of B.A. or B.Sc. of the University being or having been a student of a constituent College of the University with the —

the value of fifty rupees awarded conditions prescribed by regulations

— who

— tage

the value of one hundred and fifty rupees to be given annually to the best student graduate in the form of books instruments or apparatus for the encouragement of general knowledge and ability under such regulations as the Academic Council may prescribe

(2) There shall be a prize called Hiralal Bhargava Prize of the value of forty rupees to be awarded annually to the best Bhargava student under conditions to be prescribed by Regulations

Provided that the prize shall not be awarded to the same student twice

candidate who is placed first in an honorarium or a prize of

(1) There shall be a Provident Fund for the benefit of the permanent officers teachers clerical staff and servants of the University

(2) The management of the Provident Fund shall vest in the Executive Council which may, from time to time, make regulations or issue such general or special directions as may be consistent with the Act.

(a) The Fund, or provided for, or vary or cancel any regulations made or directions given

matter relating to the
not herein expressly

(3) (i) Every servant of the University shall hold office for a term of three years and shall receive a salary of thirty pounds per annum and shall be required to subscribe to the University of Cambridge.

(ii) to subscriber confirmation they shall not be entitled to receive any portion of the University contribution or the interest accruing thereon.

(iii) No employee of the University shall be entitled to the benefits of the Provident Fund whose services in the University entitled him to a pension or on whose account the University contributes towards his pension or who has been appointed by the University on a consolidated salary or on special terms

(4) Every servant of the University entitled to the benefits of the Provident Fund shall be required to save a certain percentage of his salary and to contribute the same to the said fund.

The subscriber may, from time to time, add or change his nominee by written application to the Executive Council.

A register of such nominees shall be kept in the University Office.

(5) The rate of subscription shall be 5 per cent of the monthly salary and the amount calculated on this basis shall be deducted from the monthly salary of the employee.

NOTE - No subscription or contribution shall be made to the Provident Fund of an employee who is on leave without pay.

(6) The University shall, in the case of each subscriber, make a monthly contribution at the rate of 12 per cent of his salary

(7) (a) The amounts accruing to the Fund shall be deposited in the Bank of India as may be approved, from time to time, by the Executive Council, in securities authorised by the Indian Trusts Act, 1950.

Interest at the rate fixed for the time, shall

(ii) shall be

the tot ement of

(5) A subscriber at the termination of his service shall be entitled to receive the amount which accumulates to his credit.

(2) On a subscriber's death, the amount at the credit of the subscriber shall be paid to the person or persons duly nominated by him or when no such nomination is made, to his legal heir or heirs

(10) The amount at the credit of a subscriber shall not be subject to any deduction even to cover loss or damage sustained by the University through the subscriber's misconduct or negligence.

(6) The University shall, in the case of each subscriber, make a monthly contribution at the rate of 12 per cent. of his salary

(7) (i) The amounts accruing to the Fund shall be placed in such Bank or Banks as may be approved, from time to time, by the Executive Council or invested in securities authorised by the Indian Trusts Act, 1882 (II of 1882) at the discretion of the Executive Council.

Interest at the rate fixed for the purpose by the Executive Council, from time to time, shall be credited to each subscriber's account

(ii) The subscription paid by a subscriber and the contribution by the University shall be entered monthly in a separate account for each subscriber.

(iii) The accounts of the Fund shall be audited once a year and a statement of the total amount to the credit of each subscriber shall be furnished to him.

(iv) A subscriber at the termination of his service shall be entitled to receive the amount which accumulates to his credit.

(v) On a subscriber's death, the amount at the credit of the subscriber shall be paid to the person or persons duly nominated by him or when no such nomination is made, to his legal heir or heirs.

(vi) The amount at the credit of a subscriber shall not be subject to any deduction even to cover loss or damage sustained by the University through the subscriber's misconduct or negligence

(vii) (i) No final withdrawal shall be allowed until the termination of the subscriber's service or his death. But in case of necessity of which the Executive Council shall be the sole judge, the Executive Council may allow a subscriber an advance of a sum not exceeding the total amount subscribed by him at a rate of interest one per cent. higher than the rate at which interest is credited to subscribers.

(ii) Recoveries towards the amount advanced shall be made with interest in monthly instalments not exceeding thirty as may be decided by the Executive Council, commencing from the first payment of a full month's salary after the advance is granted, but no recovery shall be made from a subscriber when he is on leave otherwise than on full pay.

(iii) When a subscriber has already taken an advance, he shall not be eligible for a fresh advance until the amount already advanced has been fully paid up.

(12) Notwithstanding that the University is a body corporate, it shall have power to do all matters relating to the Provident Fund specified in the Statute made in that behalf on the 28th day of September, 1922, by the Governor General in Council in exercise of the power conferred on him by section 47.

NOTE.—In the foregoing clauses of the Statute, "subscription" means the amount paid by the subscriber, and "contribution" means the amount contributed by the University.

34. *General provisions relating to Colleges* [section 23 (g)]—(1) Save as otherwise provided in the Act, all Degree Colleges shall be in close proximity to one another and to the University and shall ordinarily be located on the University estate:

Provided that the Executive Council shall have the power to exempt from the provisions of the foregoing clause, temporarily, or, if necessary, permanently, a College which is unable to comply therewith for want of a suitable site or an adequate grant-in-aid for building or maintenance

(2) *Management*.—Every recognised College shall be a public educational institution; the whole of its funds shall be appropriated to its own educational purposes and shall be fully controlled by its Governing Body.

(3) Each College recognised by the University shall be managed by a regularly constituted Governing Body.

The composition, powers and duties of the Governing Body and the appointment, powers and duties of the Chairman and other officers of the Governing Body shall be such as may be prescribed by the Ordinances.

(4) Any change in the constitution, powers or personnel of the Governing Body of a recognised College shall be reported forthwith to the Executive Council.

(5) The Principal of a College shall be responsible for the internal administration of the College

(6) Every College shall have a duly constituted College Council properly representative of the teaching staff, to advise the Principal in the administration of the College

(7) Every College shall satisfy the Executive Council that adequate financial provision is available for its continued and efficient maintenance, either in the form of an endowment or by an undertaking given by the person or body maintaining it

(8) Tuition and other fees fixed by a College shall not be below the minimum rates prescribed by the Ordinances in this behalf

(9) Every College shall maintain such registers and records as may be prescribed by the Ordinances and furnish such statistical and other information as the University may, from time to time, specify

(10) Every College shall submit each year by a date to be fixed by the Executive Council a report to the Executive Council on the working of the College during the previous year giving the particulars and circumstances of any change in the staff or the management, the number of students and a statement of income and expenditure and such other information as may be required

(11) Every College shall satisfy the University on the following points —
 (a) that it guarantees a satisfactory standard of educational efficiency for the purpose for which recognition is sought, and that it is established on a permanent basis,
 (b) that its financial resources are such as to make due provision for its continued maintenance,
 (c) that it is under proper management and is suitably organised,
 (d) that its buildings are suitable and sufficient,
 (e) that the furniture and library and laboratory equipment are adequate,
 (f) that the provision for the residence, discipline and supervision of students is satisfactory,
 (g) that due provision is made for the health and recreation of students;
 (h) that the qualifications and number of its teaching staff are adequate, and the conditions of their service such as may be approved by the University,
 (i) such other matters as are necessary for the maintenance of the tone and standards of University education

(12) A College applying for recognition shall satisfy the University on the following points —

(a) that it guarantees a satisfactory standard of educational efficiency for the purpose for which recognition is sought, and that it is established on a permanent basis,

(b) that its financial resources are such as to make due provision for its continued maintenance,

(c) that it is under proper management and is suitably organised,

(d) that its buildings are suitable and sufficient,

(e) that the furniture and library and laboratory equipment are adequate,

(f) that the provision for the residence, discipline and supervision of students is satisfactory,

(g) that due provision is made for the health and recreation of students;

(h) that the qualifications and number of its teaching staff are adequate, and the conditions of their service such as may be approved by the University,

(i) such other matters as are necessary for the maintenance of the tone and standards of University education

(13) A College applying for recognition shall give full information in the application on the following points —

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

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(r)

(14) Every College shall comply with the relevant Statutes, Ordinances and Regulations of the University

(15) Recognition shall in no case be granted with retrospective effect

(16) Where a College desires to raise the standard or alter the subjects in respect of which it is recognised, the procedure hereinbefore prescribed shall, so far as applicable, be followed

matters under this clause which occur during the period for which such Committee is appointed which period shall not be less than two years. The Appeal Committee shall have power to enquire into facts and to interpret the terms of the agreement, if any. The decision shall be final and binding on both parties and the appeal shall be referred to such arbitration. Provided that in the case of a dispute arising in connection with the termination of the services of either the Principal or any member of the teaching staff of a recognised College who is on probation or on a temporary basis, the decision of the Appeal Committee shall be final and binding.

(21) In the case of a College for women the staff shall, as far as possible, be composed of women only.

(22) The rules framed by the Governing Body of each College regarding the qualifications, emoluments and the conditions of service of every teacher in that College shall be such as may be approved by the University.

(23) A teacher dismissed for misconduct by a recognised College shall not be employed by any other recognised College without the previous consent in writing of the college dismissing him.

(24) *Admission of students*—Admission of students to a College shall be subject to the conditions prescribed by the Ordinances in this behalf.

(25) *Terms and holidays*—Each College shall conform to the University terms, vacations and holidays.

(26) *Residence, health and discipline*—Every College shall make adequate provision for the residence of its students not residing with their parents or recognised guardians and shall provide adequate facilities for the physical exercise, discipline and health of its students. Every College shall conform to the conditions of residence prescribed by the Ordinances and be subject to the control of the Board of Residence, Health and Discipline.

(27) The conditions of residence in a College shall be prescribed by the Ordinances and every College shall be subject to inspection by any member of the Residence, Health and Discipline Board authorised in this behalf by the Board and by any other person authorised in this behalf by the Executive Council.

(28) Every College to which women students as well as men are admitted shall provide separate reading and retiring rooms and other necessary conveniences for women students.

(29) *Inspection and enquiry*—The Academic Council shall provide for the periodical inspection of each College in respect of the instruction and discipline therein and shall submit reports thereon to the Executive Council.

(30) The Executive Council may, whenever necessary, cause an inspection of a College to be made by such person or persons as it may deem fit.

(31) The Executive Council shall also have the power to cause an enquiry to be made in respect of any matter connected with a College. In every case notice shall be given to the College concerned.

as the result of the inspection or the enquiry made under the foregoing clauses and the report of the enquiry shall be submitted to the Executive Council, or

as directed within such period as may be fixed

(33) *and after*

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Statutes and Ordinances or imposed by the Executive Council at the date of recognition or at any time thereafter, and the decision of the Central Government on the appeal shall be final

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within thirty days of the receipt of any decision of the Executive Council to withdraw recognition, and the decision of the Central Government on the appeal shall be final

(34) *Budget of financial requirements*.—Every College shall submit on or before 15th November each year a full statement of its financial requirements to the Executive Council for submission to the Governor General in Council

(35) When a College ceases to exist with the sanction of the University, the disposal of its assets, where not specifically provided for, shall be settled by the Governing Body, the University and the Central Government in consultation. If these bodies should fail to reach an agreement, the Central Government shall appoint an arbitrator whose decision shall be final

(36) Every Governing Body shall maintain a Provident Fund for the benefit of members of its teaching staff, in accordance with rules prescribed by the Central Government

(37) All trust funds belonging to the College or under the control of the Governing Body shall be shown separately in the accounts of the College

(38) Investment of funds belonging to the College or under the control of the Governing Body shall be made in property and securities authorised by law for the investment of trust funds or such other classes of security as may, from time to time, be approved by the Central Government

35 *Instr*

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(2) When

instruction in respect of which it is recognised, the procedure prescribed in respect of its recognition shall, as far as applicable, be followed

(3) A College may not, without the previous permission of the Executive Council and the Academic Council, suspend instruction in any subject which it is authorised to teach

(4) All recognised teaching in connection with the University course shall be conducted under the control of the Academic Council by teachers of the University (section 7)

(5) "Recognised teachers of the University" shall be members of the staff of a recognised College of the University, recognised by the Executive Council as Professors, Readers, or Lecturers, or otherwise as teachers of the University, whose teaching in their own College, in subjects for which they are recognised, shall be regarded as recognised teaching in courses of study pursued in the University (Statute 20)

(6) No person shall be recognised by the Executive Council as a teacher of the University except on the recommendation of the Committee of Selection constituted for the purpose (Statute 11)

(7) The number of recognised teachers in a College, their qualifications, emoluments and the conditions of their service shall be such as may be determined by the Ordinances

(8) *Council*

Council a

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standard as it may be authorised to do,

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the Ordinances

(8) *Council*

Council a

of the University, direct that such part of the teaching of the University as may be prescribed by the Ordinances may be provided on a basis of co operation among the Colleges or among the Colleges and the University

(9) Teaching in the B A Honours and Post graduate courses may be organised by the Academic Council on a basis of co operation between the University and the Colleges or among the Colleges themselves through the Deans of Faculties concerned and co ordinated by the Board of Co ordination. The principle of co-operative teaching may likewise be extended to the B A Pass in some selected departments or subjects where the small size of the classes makes its application

in any College in the University

(10) Arrangements for teaching other than B A Honours Post graduate courses and the courses of study in B A Pass on a co operative basis scheduled in the Ordinances according to the foregoing clause shall be made by the Principal of a recognised College for the students of his own College. The time table of each College for this teaching shall be framed by the Principal in co operation with the Deans of the Faculties concerned

(11) Lectures delivered by a recognised teacher of the University for the benefit of students of his own College may be open to students of any other College or Colleges either by mutual agreement between the Colleges concerned or under the direction of the Academic Council after securing the consent of the authorities of the College to which the teacher belongs

(12) Every College shall be subject to inspection from time to time in respect of the instruction and education therein by one or more persons appointed by the Academic Council in this behalf. The Executive Council may, on the report of the Academic Council, advise the College to take such action as may be necessary within such period as may be specified.

36 There shall be a Board of Diploma Courses in Domestic Sciences. The constitution powers and duties of the Board shall be prescribed by the Ordinances.

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to amend the Delhi University Act 1922 to provide for the introduction of a three year degree course which is an essential feature of a scheme for the development of the University prepared by the present Vice Chancellor Sir Maurice Gwyer and accepted by the Government of India. The Bill also seeks to make certain changes in the Act and the Statutes which experience has shewn to be desirable.

2 It is proposed that the Vice Chancellor of the University may be able to exercise continuous and expert supervision of the development scheme. The proposed provision is only permissive and at his own request will not apply in the case of the present Vice Chancellor. The intention is to appoint a whole time Vice Chancellor only if circumstances make such an appointment necessary in the interest of the University. Acts of the Universities of Madras Allahabad and Dacca provide for the appointment of a whole time Vice Chancellor.

3 The power to accord recognition to or withdraw recognition from individual Colleges is now vested in the Court. It is felt that while the Court should continue to prescribe the conditions to be fulfilled by recognised Colleges the decision as to whether a College is in fact complying with the prescribed conditions should be left to the principal executive body of the University i.e. the Executive Council.

The existing provision for an appeal to the Central Government in the case of withdrawal of recognition will have to be continued. Acts of the Universities of Madras the executive body, i.e., the Syndicate

NEW DELHI,

J. D. TYSON.

The 20th March, 1943

Notes on Clauses

Clause 2 clarifies the position of a person acting as Principal, during a vacancy.

Clause 3 (a) regularises the admission to examination of and the granting of degrees to non collegiate women students, who do not pursue a course of study in the University.

(b) regularises grants made from University funds to external bodies, e.g. the Delhi Students' Literary League, carrying on work in connection with adult education.

✓ Clause 4 removes the requirement that a teacher must of necessity be attached to some College.

Clause 5 makes the necessary provision for the appointment, if need arises, of a whole time paid Vice Chancellor.

Clause 6—The words omitted are unnecessary. The question of discipline is an administrative question and ought not to be confused with questions of legal powers and duties depending on an interpretation of the Act, the Statutes and the Ordinances.

Clause 7—The acts, the perfor

clause 7

Clause 9—The changes in the Act make necessary certain changes in the Statutes, and certain other changes in the Statutes are necessary either for the purpose of facilitating the measures with a view to which the Act is now being amended, or to remove defects in the Statutes.

Clause 10—This amendment is germane to those made by clauses 7 and 8. At present before a College can be recognised it would be necessary to make a new Statute. The section, as amended, while continuing the recognition of all Colleges already recognised, provides that future recognitions and withdrawals of recognition will be those made under section 22 (ff).

Clause 11—The appointment of Wardens and superintending staff of the Halls is clearly an executive act, and ought not to require to be controlled by a Statute.

Clause 12 inserts the necessary reference to the examination held by the Board of Higher Secondary Education for the Delhi Province.

Clause 13—The term "member of the University" is not defined in the Act and expression

ment Grants, each College will have a provident fund with rules approved by the Central Government.

Clause 16—The sections omitted are spent.

Clause 17—See note on clause 9.

The Schedule—Notes on changes made in the Statutes.—

1 Statute 3—Provision is made for the representation of Professors of the University, who are a new element, on the Executive Council and for increasing the representation of women.

2 Statute 15—Clause (a) of the original Statute which is spent is omitted.

3 *Statute 16*—Provision made for the appointment of two Proctors instead of one and the Vice Chancellor's responsibility for maintaining discipline is clearly brought out

4 *Statute 17*—The Committee of Selection under the existing Statute is a very unwieldy body. The constitution of the Committee proposed in the revised Statute is based on the recommendations of the Delhi University Enquiry Committee, 1927

5 *Statute 19*—This Statute has been revised in conformity with the proposed amendments to sections 22 and 34 of the Act, vide clauses 7 and 10 of the Amending Bill

6 Existing *Statute 28* has been deleted as there is no separate Law Hall. The intention of the University is to accommodate all non collegiate students in any Hall maintained by the University

7 *Statute 34*—This Statute has been amended to bring it into line with the revised conditions of Government Grants to Colleges recently prescribed by the Government of India

8 *Statute 35*—The Statute has been revised in conformity with the proposed amendment to section 22 of the Act contained in clause 7 of the Amending Bill

M N KAUL

Secy to the Govt of India

The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, JULY 31, 1943

Separate pricing is given in the Part in order that it may be filed as a separate compilation.

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Select Committee on the Bill to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability, was presented to the Legislative Assembly on the 26th July, 1943 —

We, the undersigned members of the Select Committee to which the Bill to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 4—This new clause has been introduced in order to avoid duplicate payments of compensation in respect of the same injury. By section 4 of the War Injuries Ordinance, 1941, payments under the Workmen's Compensation Act, 1923, and certain other payments are already excluded, but an employer might have undertaken a liability of some other kind to pay compensation, and such liability would not be barred by section 4 of the War Injuries Ordinance. The new clause, while leaving it open to the employer, if he so wishes, to pay the full amount of compensation for which he has undertaken liability, exempts him from any legal liability to pay more than the amount by which the full amount exceeds the compensation provided for by this Bill.

Clause 5 (formerly 4)—*Sub clause (1) (b) (ii)*—Under the Scheme made under the War Injuries Ordinance, 1941, a minor may be entitled to relief on reaching the age of 15 if his permanent disability continues. This consideration was overlooked when the Bill, as drafted, provided that a minor should receive the lump sum payment payable in a like case under the Workmen's Compensation Act, 1923.

Sub clause (1) (d) (i) and (ii)—The half monthly payments under the Workmen's Compensation Act, 1923, may continue up to a limit of five years, while those under the War Injuries Scheme cannot extend beyond six months. The amendments made provide that the deduction of seven rupees shall be made so long only as the relief given under the War Injuries Scheme continues to be paid.

Clause 6 (formerly 5)—We have added an additional category, workmen employed on plantations, to the categories of workmen to whom the Act applies.

Clause 7 (formerly 6), and clause 18—We considered whether we should provide that the Scheme should be published for consideration before being made and put into operation, and whether the rules should be required to be made after previous publication. We rejected the proposal, as being conducive to undesirable delay once the Bill is enacted. But we are of opinion that steps should be taken to invite opinion on the proposed Scheme and rules before.

are made, and we have received an assurance that this will be done by circulating them beforehand to the All India associations of employers and employees. We have also been assured that a similar course will be pursued before any amendment affecting the principles of the Scheme is subsequently made.

Sub clause (5) (b)—This new provision has been introduced to enable the Scheme to provide, as the Workmen's Compensation Act, 1923, does, for deposit of compensation with the Claims Officer so that he may distribute it among the dependents, and make payments by instalments if this is considered desirable.

Sub clause (5) (d)—This new provision gives a necessary power to adjust payments under the Bill, which are essentially contingent on decisions made under the War Injuries Scheme, to any changes in those decisions.

Sub clause (5) (f) [formerly (d)]—The change made removes any difficulty that might arise if the twelve months preceding the termination of hostilities commenced half way through a quarter and enables at least four full quarters to be taken into account.

Sub clause (5) (g) [formerly (e)]—We have reduced the maximum rate for the first periodic payment from eight to four annas per hundred rupees of the wages bill. We consider that a levy at this rate should be sufficient to supply the Fund with ample money for its immediate needs. Should a shortage occur, provision is made by clause 11 (2) for such an eventuality, and it can in any case be redressed by the next periodic payment.

We have omitted the last clause, clause (f). The powers given by clause (a) are sufficient for the object in view.

Clause 9 (2) [formerly 8 (2)]—We have reduced the penalty specified, and we have revised the wording so as to make an offender liable to the fine for a continuing offence only where the offence continues after he has once been convicted.

Clause 11 (formerly 10)—Sub clause (3)—We have provided for the return to the persons who have supplied the money to the Fund, namely, employers, of any balance remaining after all payments to be made out of the Fund have been met.

Sub clause (4)—We have provided that the accounts of the Fund shall be published every six months.

Clause 12 (new)—We have inserted in the Bill provision on the lines of section 12 of the Workmen's Compensation Act, 1923 imposing upon the principal employer, where contract labour is employed for the execution of any work of the principal employer, liability for the payment of compensation under the Bill to the workmen so employed. For the assessment of the principal's insurance premium the principal will require to obtain wages figures from the contractor. *Sub clause (2)* enables provision for this to be made in the Scheme.

Clause 13 (formerly 11)—The changes made enable the authorities administering the Scheme to call for certificates, and restrict the exercise of the power of entry given by the clause to cases in which 48 hours' prior notice of the intention to make such entry has been given.

Clause 13 has been omitted as unnecessary in view of the arrangements which we understand the Scheme will make for direct payment of compensation out of the Fund.

Clause 18 (formerly 17)—We have removed the general power given to the Central Government to exempt employers from the provisions of the Bill.

Clause 19 (formerly 18)—The addition made to sub clause (2) (a) is intended to enable adjustments to be made if necessary, for the present day dearness of living allowances drawn by workmen in addition to their ordinary wages. The new sub clause (2) (g) merely rectifies an oversight.

2 The Bill was published in the Gazette of India dated the 18th March, 1943.

do not agree to this clause as it has been drafted by the Select Committee. We consider that as originally proposed any balance remaining in the Fund should be credited to the Central Government and not paid to employers. I will agree, however, to any balance being utilised by the Central Government for the benefit of workers with the concurrence of the Legislature.

S. SULTAN AHMED

B. R. AMBEDKAR

D. JOSHI

Clause 6(1)—I would make the Act applicable to all workers to whom Workmen's Act is applicable.

Clause 6(2)—I would make the Act applicable to the employees of the Government and of the Federal Railways so far as the eligibility for necessary compensation for war injuries is concerned, but I would exempt the Crown and the State Railways from the portion of the Act which deals with Compulsory Insurance.

N. M. JOSHI

18th June, 1917

Clause 13 must be omitted. Majority of Industrial Associations in the Federation of all India Chambers also are of opinion that it should be omitted.

HOOSEINBHOOY A. LALLJEE

In reference to new clause 12 it was agreed at the Select Committee Meeting that in the case of short term contracts which do not extend to a period of more than a month while the workmen under the contractor will be eligible to get compensation from the Fund, there will, however, be no obligation either on the employer or on the contractor to make returns in respect of the men employed under wages, or to pay any premium. If the period of contract, however, extends beyond a month, the machinery laid down in the Workmen's Compensation Act shall generally apply, but the Bill shall impose an obligation on the employer to submit through his principal employer a return as regards the

strength of the labour force the wages paid and the amount of premium for or paid in respect of such workers. The contractor shall supply all information through the principal employer and shall be responsible for the payment of premium in respect of his workers. The only liability that the principal employer will bear is to notify the competent authorities the name of the employee employed by him and the nature and the period of the contract.

C C MILLER

E L C GILL

V N CHANDRAVARKAR

The 2nd July, 1943

L A BILL No 16 OF 1943

[AS AMENDED BY THE SELECT COMMITTEE]

(Words underlined and sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A Bill to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability

WHEREAS it is expedient to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability

It is hereby enacted as follows —

1 Short title, extent and commencement — (1) This Act may be called the War Injuries (Compensation Insurance) Act 1943

(2) It extends to the whole of British India and applies also to British subjects in any part of India

(3) It shall come into force on such date as the Central Government may by notification in the official Gazette appoint

2 Definitions — In this Act unless there is anything repugnant in the subject or context —

(a) "employer", "adult" and "minor" have the meanings assigned to those expressions in the Workmen's Compensation Act, 1923 (VIII of 1923)

(b) the Fund means the War Injuries Compensation Insurance Fund constituted under section 10,

(c) "casualty occupied person and war injury" have the meanings assigned to those expressions in the War Injuries Ordinance, 1941 (VII of 1941),

(d) "partial disablement" means where the disablement is of a temporary nature such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time the injury was sustained and where the disablement is of a permanent nature such disablement reduces his earning capacity in any employment which he was capable of undertaking at that time

Provided that every injury specified in items 2 to 9 of the Schedule shall be deemed to result in permanent partial disablement,

(e) "prescribed" means prescribed by rules made under section 19,

(f) "total disablement" means such disablement, whether of a temporary or permanent nature as incapacitates a workman for all work which he is capable of performing at the time the injury was sustained

Provided that permanent total disablement shall be deemed to result in the permanent total loss of the sight of both eyes or from an injury specified in item 1 of the Schedule or from any combination of injuries specified in items 2 to 9 of the Schedule where the aggregate percentage of disability as specified in that Schedule against those injuries amounts to one hundred per cent,

(g) the "Scheme" means the War Injuries Compensation Insurance Scheme referred to in sub section (2) of section 7,

the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923 (VIII of 1923) reduced by seven hundred rupees, and

the case of a minor—two hundred rupees.

Where permanent total disablement results from the injury—

the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923 (VIII of 1923) reduced by one thousand rupees, and

the case of a minor—the monthly payment payable in a like case under the Scheme made under the War Injuries Ordinance, 1941 (VII of 1941) for so long as he remains a minor, and thereafter as in the foregoing clause.

Where permanent partial disablement results from the injury—

the case of an injury specified in the Schedule—such percentage of compensation which would have been payable in the case of permanent disablement as is specified therein as being the percentage of disablement.

the case of an injury not specified in the Schedule—the percentage of compensation specified in the Schedule for a disablement held by a medical authority acting under the Scheme made under the War Injuries Ordinance, 1941 (VII of 1941) to be of corresponding degree.

Where more injuries than one are sustained—the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disablement had resulted from the injuries.

Where temporary disablement, whether total or partial results from the injury—

the case of an adult—the half monthly payments payable in a like case under the Workmen's Compensation Act, 1923 (VIII of 1923) reduced in the same manner for so long as he receives any payment under the Scheme made under the War Injuries Ordinance, 1941 (VII of 1941), by seven rupees and

(ii) in the case of a minor—the half monthly payments payable in a case under the Workmen's Compensation Act, 1923 (VIII of 1923), for so long as he remains a minor and thereafter as in the foregoing sub clause

(2) When the monthly wages of a workman are more than three hundred rupees the compensation payable under this Act shall be the amount payable under the provisions of sub section (1) in the case of a workman whose monthly wages are more than two hundred rupees

6 Workmen to whom the Act applies—(1) The workmen to whom this Act applies are—

(a) workmen employed in any employment or class of employment to which the Essential Services (Maintenance) Ordinance 1941 (VI of 1941) has been declared under section 3 of that Ordinance to apply, whether such declaration or is not subsequently revoked,

(b) workmen employed in any factory as defined in clause (j) of section 2 of the Factories Act 1934 (XXV of 1934)

(c) workmen employed in any mine within the meaning of the Indian Mines Act 1923 (IX of 1923),

(d) workmen employed in any major port,

(e) workmen employed on any estate which is maintained for the purpose of growing cinchona coffee rubber or tea, and on which on any one day in the preceding twelve months twenty five or more persons have been employed

(f) workmen employed in any employment specified in this behalf by the Central Government by notification in the official Gazette

(2) This Act shall not apply to workmen employed by the Crown, nor, unless the Central Government otherwise orders by notification in the official Gazette to workmen employed by a Federal railway

7 War Injuries Compensation Insurance Scheme—(1) The Central Government shall by notification in the official Gazette, put into operation a scheme to be called the War Injuries Compensation Insurance Scheme whereby provision is made for all matters necessary to give effect to the purposes of this Act and whereby the Central Government undertakes, in relation to employers and workmen to whom this Act applies the liabilities of insuring such employers against liabilities incurred by them to workmen under this Act and the Scheme

(2) The Scheme shall secure that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Central Government

(3) The Scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein

(4) The Scheme may be amended at any time by the Central Government

(5) Without prejudice to the generality of the provisions of sub section (1) the Scheme may—

(a) make provisions regulating the payment of the compensation payable under this Act and the Scheme including provision for punishment by fine not exceeding one thousand rupees for the contravention of any requirement of the Scheme

(b) make provisions specifying the persons to whom and the proportions in which payments under this Act shall be made

(c) specify conditions or circumstances which will disentitle a workman to the compensation payable under this Act and make it an express or implied condition of any policy of insurance issued under the Scheme that the payment of compensation in defiance of such specification is not covered by the policy

(d) specify the conditions or circumstances under which the compensation payable to a workman may be withheld cancelled reduced or reviewed if the award made under the Scheme made under the War Injuries Ordinance, 1941 (VII of 1941) is withheld cancelled reduced or reviewed

11. War Injuries Compensation Insurance Fund.—(1) The Central Government shall establish a fund for the purposes of this Act to be called the War Injuries Compensation Insurance Fund into which shall be paid all sums received by the Central Government by way of insurance premiums under the Scheme or by way of payments made on composition of offences under section 16 or by way of expenses or compensation awarded by a Court under section 545 of the Code of Criminal Procedure, 1898 (V of 1898), out of any fine imposed under this Act, or by way of penalties imposed under the Scheme, and out of which shall be paid all sums required for the discharge by the Central Government of any of its liabilities under this Act or the Scheme, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme, or for the payment by the Central Government of the costs of administering the Scheme.

(2) If at any time the sum standing to the credit of the Fund is less than the sum for the time being necessary for the adequate discharge of the purposes of the Fund the Central Government shall pay into the Fund as an advance out of general revenues such amount as the Central Government considers necessary.

(3) If, when all payments which have to be made out of the Fund have been defrayed any balance remains in the Fund, the balance shall be repaid to employers who have contributed to the Fund in proportion to the contribution made by each employer.

(4) The Central Government shall prepare in such form and manner as may be prescribed and shall publish * * * every six months an account of all sums received into and paid out of the Fund.

12. Principals and contractors.—(1) Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him, and this Act shall apply as if references to the principal were substituted for references to the employer.

(2) The Scheme may make provision for the supply by a contractor to the principal of information regarding the wages paid by the contractor to workmen employed in the execution of any such work as is referred to in sub-section (1) including provision for punishment by fine not exceeding one thousand rupees for the contravention of any requirement of the Scheme.

13. Power of Central Government to obtain information.—(1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether the requirements of this Act and of the Scheme have been complied with—

(a) require any employer to submit to him such accounts books or other documents or to furnish to him such information or to give such certificates as he may reasonably think necessary and

(b) at any reasonable time, after having given to the employer forty-eight hours' notice of his intention to do so enter any premises or upon any property under the control of an employer and require any person found therein or thereon, whom he reasonably believes to be in possession of information relevant to his investigation to furnish to him such information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any request made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place be punishable with fine which may extend to one thousand rupees.

The Bill was referred to the Select Committee of the Bill further to amend the Bill and to the Bill 22 was presented to the Legislative Assembly on the 26th July 1947 —

We the undersigned members of the Select Committee to which the Bill further to amend the Bill 22 was referred, have considered the Bill and have now the honour to submit to you our Report, with the Bill as amended by us approved therein.

Clause 2—The present clause (2) of the Bill has been revised so as to permit a duly appointed Vice Principal if there were to attend meetings of the University when the Principal is absent on leave or otherwise, while debarring from so happening on a person merely acting for the Principal during an absence unless that person is a Vice Principal. When there is a vacancy in the post of Principal, then a Vice Principal is called to attend meetings in his place.

Clause 3—We have to amend the proposed proviso to sub-section (1) of section 11 of the Bill relating to the appointment of a paid Vice-Chancellor, so as to provide that a proposed person for such an appointment may be put forward by the University itself or by a person from the Council or himself. We have provided a definite term of office for such appointments and definite salary, instead of leaving them to be fixed by the Chancellor. The object of making the appointment And we have laid down the procedure to be followed in electing a paid Vice-Chancellor, so as to provide that the selection shall be made out of a panel of three names selected by a committee of three impartial persons and submitted to the Chancellor by the Executive Council.

Clause 11 of the Bill has been omitted. This proposed the omission of sub-section (2) of section 7 of the Bill dealing with the appointment of staff for University Halls. There are at present no Halls in the University. It seems to us unnecessary at the moment to make any alteration in the section.

In the *Schedule* set forth in the Schedule to the Bill several of the changes made are minor alterations to correct errors or remove ambiguities and require no comment.

Statute 17 has been revised to lay down the composition of the Selection Committee charged with the duty of making recommendations when a person is to be appointed or recognised as a teacher of the University. We have added two additional members to the four proposed in the Bill. When the appointment of a professor or reader is in question an expert from some outside University is added to the Committee and the Dean of the Faculty concerned is added when a professorial appointment is in question, while the head of the Department concerned is added when a readership is in question. The necessity for expert qualifications in the member chosen from outside the University is dispensed with when a readership other than a professorship or readership is in question.

Statute 23 (in the Bill as introduced) has been omitted. It merely supplements a portion of the former Statute 16 which was of a transitory nature and is now spent.

Statute 23 (as now numbered) The words inserted have reference to the term of office of four years now provided in the Bill for the paid Vice-Chancellor.

Statute 33 (as now numbered) —In clause (1) we have inserted words showing that the members of the teaching staff on the Governing Body of a College are to be elected by the staff itself. In clause (2) we have provided that in granting recognition to a College retrospective effect not extending beyond the date on which application for recognition was made, may be given. In clause (3), with a view to ensuring full consideration before a decision to withdraw recognition from a college is taken we have provided that the Executive Council shall be consulted in favour of withdrawing recognition from a College. The amendment made in clause (2) in this Statute and clause (12) of Statute 31, intended to co-ordinate the two provisions.

² The Bill was published in the Gazette of India, dated the 27th March, 1943

3 We think that the Bill has not been so altered as to require republication, and we recommend that it be passed as now amended

S SULTAN AHMED

J D TYSON.

*NILAKANTHA DAS

†RENUKA RAY

KAMALUDDIN AHMAD.

JOHN SARGENT.

†P 'N BANERJEA

M GHILASUDDIN.

The 12th July, 1943

NOTE

NOTE

The University of Delhi may not for long like to have nominated women on its Executive Council. I suggest that under statute 3(viii) the Chancellor may nominate only two persons. Two women may come by election from some constituency devised for the purpose. Or in the alternative the Chancellor may nominate 4 persons, two of whom may be women already in the Executive Council. The Chancellor may also nominate three persons in the Executive Council, two of whom may be women already in the Executive Council.

The 22nd June, 1943

NILAKANTHA DAS

NOTES OF DISSENT

In regard to statute 3(viii), i.e., two women nominated by the Chancellor, I am willing to agree to a compromise that the Chancellor should nominate the two women for the first period of three years provided after the first period of three years is over, the two seats reserved for women are filled in by the Executive Council by election from amongst notable women educationalists who would be competent to bring in a wider outlook and a fresh vision rather than local knowledge and administrative experience only.

RENUKA RAY

(1) *Clause 5* — I suggest that a provision in the
own notion or "a provision in the
Chancellor. But the great majority of the Indian Universities part time Vice Chancellors have ren-
d no necessity has arisen for the
It is a well known fact that in
respect and enjoy greater con-
sideration, it should be considered
necessary to make such a provision for the Delhi University to be a Vice-Chancellor.
I am, Sir, Sir,
by :
be :
If :
necessity for the same cannot be denied that they are in a better position to judge the
In my opinion, the Vice-Chancellor is in a better position to judge the
Delhi University Vice-Chancellor on the
administration of the University or the authorities who carry on the actual ad-

* Subject to a Note

† Subject to a Note of Dissent.

I agree with the majority of Members of the Select Committee in regard to the procedure to be adopted for the selection of the Vice-Chancellor, but the wording of their Report seems to me to be defective and unnecessarily complex. I would, therefore, suggest the substitution of the following paragraph for 3 (c) of the Report—

"The following procedure shall be adopted for the selection and appointment of the Vice-Chancellor—

A Selection Committee of three members shall be formed, two of whose members shall be nominated by the Executive Council being persons unconnected with the Delhi University, and one member shall be appointed by the Chancellor. One of these three members of the Committee shall be appointed its Chairman by the Chancellor. This Committee shall select not less than three persons for the post of the Vice-Chancellor and shall report its selection to the Executive Council. The Executive Council shall then make its recommendation on three of the selected persons to the Chancellor who shall appoint one of such persons as the Vice-Chancellor."

(2) *Clause 11*—This provision seeks to place two examinations—one lower and the other higher—on the same footing. This is an anomaly. The object of the insertion of this clause is the introduction of a three-year degree course in the Delhi University. I am opposed to such introduction on academic as well as other grounds. I have not the slightest doubt in my mind that, if the innovation is made under the educational arrangements at present prevailing in this country, it will lead to a lowering of the standard of teaching and examination in the University. Besides, the students of the Delhi University will be placed in a difficult position in the matter of entering a profession into the other universities of India which will maintain a four-year degree course. I therefore suggest the deletion of this clause.

(3) *Statute 3(ii)*—The object of this provision is to give separate representation to University Professors on the Executive Council. There are at present only three salaried and two honorary Professors in the Delhi University, and it would be wrong to form a special committee to elect two representatives. If to the creation of what is known as a "borough." Further I do not think it desirable to create such interests distinct and separate from those of Readers and Lecturers, and any attempt to create such interests would be undesirable from the academic as well as the administrative standpoint. I do not object to the representation of Professors, but this object may be secured in another and a better way. I suggest that statute 3(ii) be combined with statute 3(i) so that the amended statute may read as follows—

"Four members of the Academic Council elected by the Academic Council of whom two shall be university Professors."

(4) *Statute 3(iii)*—It is intended by the insertion of this sub-statute to increase the number of nominated members from two to four in order to give greater representation to women on the Executive Council. In my opinion nomination by the Chancellor is not the proper method of securing the representation of women. Nor do I consider it desirable to strengthen the hands of the Government as against the elected element in the Executive Council. My personal inclination is to do away with the nominated element in the Executive Council altogether. But as two members have been nominated by the Chancellor since the establishment of the Delhi University, I would allow the existing number to stand for the present. I would, therefore, suggest the substitution of the following for the existing sub-statute—

(iii) Two persons nominated by the Chancellor,
(iv) Two women members to be appointed by the Academic Council, who need not be members of the Academic Council."

(5) *Statute 23*—I suggest that in the first line the word "otherwise" be inserted after the words "except as" and before the word "provided." This would be a verbal amendment but would help to make the distinction between the honor and the salaried Vice-Chancellor quite clear.

- (v) the Superintendent of Education Delhi and Ajmer Merwara,
- (vi) the Chairman of the Punjab Chamber of Commerce,
- (vii) the Chairman of the Delhi Municipality,
- (viii) the Chairman of the Delhi District Board,
- (ix) the Senior Officer serving in the Public Works Department under the Commissioner of Delhi,

(x) the Senior Medical Officer, Delhi

(xi) the Principals of the Intermediate Colleges in Delhi which prepare candidates for admission to the University,

(xii) the Wardens

(2) The number of graduates to be elected as members of the Court by registered graduates from among their own body shall be twenty five

(3) [Section 18 (2)]—The number of teachers to be elected as members of Court by the teachers other than Professors and Readers shall be ten

(4) or other

(5) of State and the Legislative Assembly from among their own numbers shall be two and four respectively

(6) The number of persons to be appointed by the Chancellor under clause (1) of sub section (1) of section 18 shall be fifteen

(7) Save as otherwise provided members of the Court other than *ex officio* members shall hold office for a period of three years

Provided however that a member nominated or elected in his capacity as member of a particular body or as the holder of a particular appointment shall be eligible to be a member of that body

21) — (1) The members of the Executive Council in addition to the Chancellor, the Rector and the Treasurer shall be—

Class I—*Ex officio members*

- (i) the Superintendent of Education Delhi and Ajmer Merwara,
- (ii) the Deans of the Faculties
- (iii) the Principals of recognised Colleges
- (iv) the Educational Adviser to the Government of India

Class II—*Other members*

(v) five members of the Court elected by the Court at its annual meeting of whom at least two shall be graduates of the University elected by the registered graduates from among their own number

(vi) two members of the Academic Council elected by the Academic Council

(vii) two members to be appointed by the Professors of the University (salaries and honorary) from their own number

(viii) four persons nominated by the Chancellor of whom at least two shall be women

(2) Members other than *ex officio* members shall hold office for a period of three years

Provided that members elected by any body of persons from among their own number shall hold office so long only within the said period as they continue to be members of the body which elected them

provisions

lecture hall

Council the

to appoint

clerical staff and servants in accordance with the Statutes,

(d) to appoint all examiners after considering the recommendations of the Academic Council

(e) to delegate, subject to such conditions as may be prescribed by Regulations made by the Executive Council, its power to appoint officers, clerical staff and servants to such person or authority as the Executive Council may determine,

(f) to manage and regulate the finances, accounts, investments, property and all administrative affairs whatsoever of the University, and, for that purpose, to appoint such agents as it may think fit.

(g) to accept bequests, donations and transfers of property to the University. Provided that all such bequests, donations and transfers shall be reported to the Court at its next meeting.

(h) to provide the buildings, premises, furniture, apparatus, equipment and other means needed for carrying on the work of the University.

(i) after report from the Finance Committee, to enter into, vary, carry out, confirm and cancel contracts on behalf of the University.

(j) to invest any monies belonging to the University, including any unapplied income, in any of the securities described in section 20 of the Indian Trusts Act, 1882 (II of 1882) or in the purchase of immovable property in India, with the like power of varying such investments, or to place on fixed deposit in any bank approved in this behalf by the Central Government any portion of such monies not required for immediate expenditure.

5 The Academic Council (section 23) — (1) The members of the Academic Council, in addition to the Vice Chancellor and the Rector shall be—

Class I — Ex-officio members

- (i) the Deans of the Faculties,
- (ii) the Principals
- (iii) the Professors and Readers,
- (iv) the Librarian of the University.

Class II — Other members

(v) persons, if any, not exceeding three in number and not being teachers, appointed by the Council.

(2) The members, teachers of the University not exceeding one tenth of its numbers as so constituted

(3) Members other than ex-officio members shall hold office for a period of three years

Provided that teachers of the University so opted as such shall hold office so long only within the said period as they continue to be teachers of the University

6 Powers of the Academic Council (section 23) — The Academic Council shall have the following powers, namely—

(a) to make regulations for the government and discipline of the University, and for the conduct of its affairs, and for the admission of students, and for the appointment and removal of officers and servants, and for the award of degrees, and for the award of honours, and for the award of fellowships, scholarships, exhibitions, bursaries, medals and other rewards.

(c) to recommend examiners for appointment after report from the Faculties concerned,

(d) to control the University Library, to frame Regulations regarding its use, and to appoint a Library Committee under the general control of the Academic Council to manage the affairs of the Library

(e) to assign subjects to the Faculties

(f) to appoint teachers to the Faculties

(g) to promote research within the University and to require reports on such research from the persons employed thereon,

(h) to provide for the maintenance of the University and for the instruction and

(i) and Colleges

7 The Faculties [section 24 (2)] — (1) Each Faculty shall consist of—

(a) the heads of the Departments comprised in the Faculty,

(ii) such teachers of subjects assigned to the Faculty as may be appointed to the Faculty by the Academic Council,

(iii) such teachers of subjects not assigned to the Faculty but having, in the opinion of the Faculty, special knowledge in those subjects, as may be appointed to the Faculty by the Academic Council on account of their possessing expert knowledge in a subject or subjects assigned to the Faculty.

(2) The total number of teachers of the Faculty shall not exceed fifteen.

Academic Council

8 *Powers of the Faculties* [section 24 (2)]—Subject to the provisions of the Act each Faculty shall have the following powers, namely—

(a) to constitute Committees of Courses and Studies; (b) to recommend to the Academic Council the courses of studies for the different examinations, after consulting the Committees of Courses and Studies, (c) to recommend to the Academic Council, after consulting the Committees of Courses and Studies, the conditions for the award of the degree, (d) to recommend to the Academic Council, to organise research in the subjects assigned to the Faculty; and (f) to deal with any matter referred to it by the Academic Council

9 *Board of Co-ordination* (section 26)—There shall be a Board of Co-ordination composed of the Vice Chancellor, who shall be Chairman thereof, the Rector, the Deans of the Faculties and the Registrar, to co-ordinate the teaching of the University, and in particular to co-ordinate the work and time tables of the various Faculties, and to assign lecture rooms, laboratories and other rooms to the Faculties.

10 *The Dean* [sections 16 and 24 (5)]—(1) The Dean of each Faculty shall be the executive officer of the Faculty, and shall preside at its meetings. He shall hold office for three years.

(2) He shall issue the lecture lists of the University in the Departments comprised in the Faculty and shall have the right to appoint and dismiss any teacher of teaching therein.

(3) He shall convene and preside at any meeting of any committee of the Faculty.

11 *The Warden* [section 35 (2)]—The appointment of a Warden shall, in the case of a Hall maintained by the University, be made by the Executive Council, and in other cases be subject to the approval of the Executive Council.

12 *Attachment of staff* [section 36 (2)]—The University shall not residing in the University shall be subject to the control of the Executive Council, and shall be subject to the control of the Executive Council.

Provided that special exemption from the provisions of this Statute may be made available to women students under conditions to be prescribed by the Ordinances.

13 *Withdrawal of degrees and diplomas* (section 20)—The Court may, on the recommendation of the Executive Council, by a resolution passed with the concurrence of not less than two thirds of the members voting, withdraw any degree or diploma conferred by the University.

14 *Honorary degrees* [sections 4 (3) and 28 (a)]—(1) All proposals for the conferment of honorary degrees shall be made by the Academic Council to the Executive Council, and shall require the assent of the Court before submission to the Chancellor for confirmation.

Provided that, in cases of urgency, the Chancellor may act on the recommendation of the Executive Council only.

(2) Any honorary degree conferred by the University may, with the previous approval of two thirds of the members present at any meeting of the Court and the sanction of the Chancellor, be withdrawn by the Executive Council.

15 *Registered graduates* [sections 2(e) and 28 (j)]—The following persons shall, payment of such fees as may be prescribed by the Statutes, be entitled to have their names enrolled in the register of registered graduates, namely, all graduates of the University of three years' standing and upwards.

16 *Officers* [section 8 (VIII)]—There shall be the following officers, namely—
(i) two Proctors to assist the Vice Chancellor in the maintenance of discipline in the University and (ii) a Librarian for the University Library.

17 *Committee of Selection* [section 28 (h)]—(1) No person shall be appointed recognised as a teacher of the University except on the recommendation of a Committee of Selection constituted for the purpose * * *

(2) The Committee of Selection shall consist of six members, namely—

- (i) the Vice Chancellor,
- (ii) the Educational Adviser to the Government of India,
- (iii) a person elected by the Academic Council, who need not be a member of the Academic Council but shall be a person unconnected with any of the Colleges,
- (iv) a person nominated by the Chancellor, and,

where the appointment or recognition of a Professor is in question,

(v) a person, not connected with the University or any College, with expert knowledge of the subject concerned, appointed by the Executive Council, and

(vi) the head of the Department concerned, where the appointment or recognition of a teacher other than a Professor or Reader is in question,

(vii) a person not connected with the University or any College, appointed by the Executive Council, and

(viii) the head of the Department concerned.

(3) The Committee of Selection appointed under sub clause (1) shall report to the Executive Council which shall, if it accepts the recommendation of the Committee, make the appointment or confirm the recognition as the case may be. If the Executive Council does not accept the recommendation of the Committee it shall refer the case to the Chancellor who shall appoint or recognise such persons as he thinks fit.

Provided that before referring the case to the Chancellor the Executive Council shall inform the College concerned of its decision and the grounds therefor, and the College shall be entitled to make representation thereon. The representation of the College if any together with the decision of the Executive Council and the grounds therefor, shall be laid before the Chancellor.

(4) Nothing in this Statute shall be construed as prohibiting the University in accepting a gift for the establishment of a Professorship Lectureship or other post, subject to a condition that the person appointed to the post shall be elected in such manner as shall have been agreed between the donor and the University.

18 *Recognition of teachers*—(1) The qualifications of recognised teachers of the University shall be such as may be determined by the Ordinances.

(2) All applications for the recognition of teachers of the University shall be made in such manner as may be laid down by the Regulations made by the Executive Council in that behalf.

(3) The period of recognition of a teacher of the University as Professor or Reader or Lecturer shall be determined by the Ordinances made in that behalf. A person in the service of a College, recognised as a teacher of the University otherwise than as a Professor, Reader or Lecturer, shall continue to be recognised so long as he is in the service of the College.

(4) The Executive Council may, on a reference from the Vice Chancellor, remove a recognised teacher.

Provided that the teacher or the College concerned may, within a period thirty days from the date of the order of withdrawal, appeal against the order to the Chancellor whose decision shall be final

19 *Recognition of Colleges* [section 34(1)] —(1) The following Colleges, namely —

(a) St Stephen's College, (b) Hindu College, (c) Arabic College, (e) Commercial College, and (f) be recognised as Colleges of the University, Executive Council, on the recommendation to time, authorise them to teach

(2) So long as a direction made by the Central Government under the provisions to sub section (2) of section 36

recognised as a College of the U

shall provide instruction up to 1

namely —

English, History, Mathematics, Economics, Commerce, Geography, Philosophy, Sanskrit, Persian, Hindi and Urdu

(3) Nothing in this Statute shall be deemed to restrict any powers conferred on the Executive Council to withdraw recognition from any College in accordance with these Statutes

20 *The Faculties* [section 24 (1)] —(1) The following Faculties shall be included in the University, namely —

(a) the Faculty of Arts, (b) the Faculty of Science, and (c) the Faculty of Law

(2) The Members of each Faculty other than those mentioned in sub clause (1) of clause (1) of Statute 7 shall hold office for a period of two years

21 *The University teachers* [section 2 (h) and Statute 4 (c)] —(1) Teachers of the University shall be —

(a) Appointed teachers of the University,

(ii) Recognised teachers of the University

(2) Appointed teachers of the University shall be either —

(a) servants of the University paid by the University and appointed by the Executive Council as Professors, Readers, or Lecturers or otherwise as teachers of the University, or (b) persons appointed by the Executive Council as Honorary Professors, Readers or Lecturers or otherwise as teachers of the University

(3) "Recognised teachers of the University" shall be members of the staff of a recognised College of the University, recognised by the Executive Council as Professors, Readers, or Lecturers, or otherwise as teachers of the University, whose teaching in their own College, in subjects for which they are recognised, shall be regarded as recognised teaching in Courses of Study pursued in the University

Regulations

(2) No graduate shall be entitled to have his name enrolled, and retained in the register of registered graduates except on payment of the following fees, namely —

(a) an initial fee of five rupees and (b) an annual fee of two rupees for fifteen years or a compounded fee of twenty rupees

(3) On the Registrar being satisfied that the application is in order, and after receipt of the prescribed fee, he shall cause the name of the applicant to be enrolled in the register

(4) The annual fee shall be payable in advance by the 1st day of December every year. If any registered graduate fails to pay the fee by that day, the Registrar shall cause his name to be removed from the register

(5) A registered graduate whose name has been removed under sub clause (4) of this Statute may, by payment of all arrears to the University, have his name re-

(5) dar
the Un

versity for membership of the Court

23 Term of office of Vice Chancellor [sections 11 (1) and 28 (c)]—Except as the Act the Vice Chancellor shall hold office for a period of two years

24 Fellowship in Economics or History [sections 4 (5) and 28 (b)]—There may be University Fellowship in Economics or History of the value of one hundred rupees per annum for one year which may be extended on the recommendation of the Dean of the Faculty concerned for another year, for the encouragement of research or original work under such conditions as the Academic Council may prescribe by Regulations

25 University scholarships [sections 4 (5) and 28 (b)]—(1) Two scholarships each year of the value of twenty five rupees per mensem for students for the M A examination and two scholarships each year of the value of twenty five rupees per mensem for students for the M Sc shall be awarded for merit on the result of the B A or B.Sc examination

Provided that if less than two suitable candidates are available for either M A or M Sc the scholarship or scholarships, thus set free may be transferred for the occasion to the M.Sc and M A, respectively, but only to candidates who have been placed in the first class

(2) Eight scholarships each year of the value of ten rupees per mensem plus tuition fee each shall be awarded—five on the result of the Intermediate examination Faculty of Arts and three on the result of the Intermediate examination Faculty of Science

(3) One scholarship each year of the value of ten rupees per mensem plus tuition fee shall be awarded on the results of the Intermediate examination (Arts or Science) to the best woman candidate, provided she has secured at least 50 per cent of the aggregate marks in the examination

(4) (a) Three scholarships each year of the value of ten rupees per mensem plus tuition fee each shall be awarded to students who have secured the highest percentage of marks in the examination of any University established by or an examination recognised as equivalent thereto in any supplementary examination that may be demanded by the University

(b) Three scholarships each year of the value of ten rupees per mensem plus tuition fee each shall be awarded to students who have secured the highest percentage of marks in the High School examination of the Board of Secondary Education Delhi

26 Endowed scholarships [sections 4 (5) and 28 (b)]—(1) There shall be the following scholarships and medals—

Value of twelve rupees
Hindu Khatri student
examination recognised
Delhi
Act
one

(a) Jaisankar Hariharan and others—
rupees and annas eight per mensem awarded for one year to the best Hindu Khatri student in the examination of Arts or Science in the Intermediate examination recognised as equivalent thereto, the Faculty of Arts or Science

fifteen
rupees
annas
(2)
the
University every year

(a) M Bhola Nath Gold Medal of the value of one hundred rupees awarded every year to the best Hindu candidate in the B A examination provided he knows Sanskrit

Model of the value of one hundred rupees award
Technical education

candidate who passes the examination for the degrees of B A or B Sc of the University being or having been a student of a constituent College of the University with the highest percentage of marks

(v) Pandit Raghubar Dayal Gold Medal of the value of fifty rupees awarded annually to the best candidate in Sanskrit under conditions prescribed by Regulations made in that behalf

(vi) Ravi Kanta Devi Gold Medal awarded annually to the lady candidate who passes the Intermediate examination of the University with the highest percentage of marks under conditions prescribed by Regulations made in that behalf

27. Prizes [sections 4 (8) and 28 (b)] —(1) There shall be a Rector's Prize of the value of one hundred rupees awarded annually to the best under graduate

be prescribed by Regulations

Provided that the prize shall not be awarded to the same student twice

28. Law Prize [sections 4 (8) and 28 (b)] —A candidate who is placed first in the first class at the LL B examination shall receive an honorarium or a prize of books to the value of two hundred rupees

29. Provident (Permanent Appointments) Fund [sections 46 (1) and 28 (ii)] —(1) There shall be a Provident Fund for the benefit of the permanent officers, teachers, clerical staff and servants of the University

(2) The management of the Provident Fund shall vest in the Executive Council which may, from time to time, make Regulations or issue such general or special directions as may be consistent with the Statutes as to—

(a) the conduct of the business of the Fund and (b) any matter relating to the Fund, or

(3) Any employee or servant of the University who is employed on a permanent basis and receiving a salary of thirty rupees per mensem or more shall be entitled and required to subscribe to the Provident Fund Part time, temporary or official

confirmation they shall not be entitled to receive any portion of the University contribution or the interest accruing thereon

(iii) No employee of the University shall be entitled to the benefits of the Provident Fund whose services in the University entitle him to a pension or on whose account the University contributes towards his pension or who has been appointed by the University on a consolidated salary or on special terms

(4) Every servant of the University entitled to the benefits of the Provident Fund shall be required to sign a written declaration in the prescribed form that he has read this Statute and agrees to abide by it, and shall hand in for registration in the University Office the names of the person or persons to whom he wishes the balance at his credit to be paid in the event of his death

The subscriber may, from time to time, add or change his nominee by written application to the Executive Council

A register of such nominees shall be kept in the University Office

(5) The rate of subscription shall be 8 per cent of the monthly salary and the amount calculated on this basis shall be deducted from the monthly salary of the employee

NOTE.—No subscription or contribution shall be made to the Provident Fund of an employee who is on leave without pay

(6) The University shall, in the case of each subscriber make a monthly contribution at the rate of 12 per cent of his salary.

(7) (i) The amounts accruing to the Fund shall be placed in such Bank or Banks as may be approved, from time to time, by the Executive Council, or invested in securities authorised by the Indian Trusts Act, 1882 (II of 1882), at the discretion of the Executive Council.

Interest at the rate fixed for the purpose by the Executive Council, from time to time, shall be credited to each subscriber's account.

(ii) The subscription paid by a subscriber and the contribution by the University shall be entered monthly in a separate account for each subscriber.

(iii) The accounts of the Fund shall be audited once a year and a statement of the total amount to the credit of each subscriber shall be furnished to him.

(5) A subscriber at the termination of his service shall be entitled to receive the amount which accumulates to his credit.

(9) On a subscriber's death, the amount at the credit of the subscriber shall be paid to the person or persons duly nominated by him or when no such nomination is made, to his legal heir or heirs.

(10) The amount at the credit of a subscriber shall not be subject to any deduction even to cover loss or damage sustained by the University through the subscriber's misconduct or negligence.

(11) (i) No final withdrawal shall be allowed until the termination of the subscriber's service or his death. But in case of necessity of which the Executive Council shall be the sole judge the Executive Council may allow a subscriber an advance of a sum not exceeding the total amount subscribed by him at a rate of interest one per cent higher than the rate at which interest is credited to subscribers.

(ii) Recoveries towards the amount advanced shall be made with interest in monthly instalments not exceeding thirty as may be decided by the Executive Council, commencing from the first payment of a full month's salary after the advance is granted but no recovery shall be made from a subscriber when he is on leave otherwise than on full pay.

(iii) When a subscriber has already taken an advance he shall not be eligible for a fresh advance until the amount already advanced has been fully paid up.

(12) Notwithstanding the provisions of the preceding clauses of this Statute all matters relating to or arising out of the constitution and management of the Provident Fund specified in clause (1) of this Statute shall, in respect of the period prior to the 19th day of June 1928 be governed and regulated by the original Statute made in that behalf on the 28th day of September 1922 by the Governor General in Council in exercise of the power conferred on him by section 47.

NOTE.—In the foregoing clauses of this Statute 'subscription' means the amount paid by the subscriber and 'contribution' means the amount contributed by the University.

30 (Section 38).—The Annual Report of the University shall be submitted to the Court one month before the annual meeting of the Court.

31 [Section 39 (2)].—The Executive Council shall submit to the Court one month before the annual meeting of the Court a statement of the financial estimates for the ensuing year.

32 *Provident (Temporary Appointments) Fund* [sections 46 (1) and 28 (4)]—

(1) There shall be a Provident Fund for the benefit of the officers teachers clerical staff and servants of the University appointed to a substantive post for a period of not less than two years.

(2) The management of the Provident Fund shall vest in the Executive Council which may, from time to time, make Regulations or issue such general or special directions as may be consistent with the Statutes as to—

(a) the conduct of the business of the Fund and (b) any matter relating to the Fund or its management or the privileges of the depositors not herein provided for or vary or cancel any Regulations made or directions given.

(3) (i) Every whole time servant of the University appointed to a substantive post for a period of not less than two years and receiving a salary of thirty rupees per mensem or more shall be entitled and required to subscribe to the Provident Fund.

(ii) Persons appointed on probation to substantive appointments will be entitled to subscribe to the Provident Fund, but in case their services terminate before their confirmation they shall not be entitled to receive any portion of the University contribution or the interest accruing thereon

(iii) No employee of the University shall be entitled to the benefits of the Provident Fund whose services in the University entitle him to a pension or on whose account the University contributes towards his pension or who has been appointed by the University on a consolidated salary or on special terms

(4) Every servant of the University entitled to the benefits of the Provident Fund shall be required to sign a written declaration in the prescribed form that
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The subscriber may, from time to time, add or change his nominee by written application to the Executive Council

A register of such nominees shall be kept in the University Office

(5) The rate of subscription shall be 8 per cent of the monthly salary, and the amount calculated on this basis shall be deducted from the monthly salary of the employee

NOTE.—No subscription or contribution shall be made to the Provident Fund of an employee who is on leave without pay

(6) The University shall, in the case of each subscriber, make a monthly contribution at the rate of 12 per cent of his salary

(7)-(i) The amounts accruing to the Fund shall be placed in such Bank or Executive Council or invested (II of 1882) at the discretion

Interest at the rate fixed for the purpose by the Executive Council, from time to time, shall be credited to each subscriber's account

(ii) The subscription paid by a subscriber and the contribution by the University shall be entered monthly in a separate account for each subscriber

(iii) The accounts of the Fund shall be audited once a year and a statement of the total amount to the credit of each subscriber shall be furnished to him

(8) A subscriber at the termination of his service shall be entitled to receive the amount which accumulates to his credit

(9) On a subscriber's death, the amount at the credit of the subscriber shall be paid to the person or persons duly nominated by him or when no such nomination is made, to his legal heir or heirs

(10) The amount at the credit of a subscriber shall not be subject to any deduction even to cover loss or damage sustained by the University through the subscriber's misconduct or negligence

(11) (i) No final withdrawal shall be allowed until the termination of the subscriber's service or his death. But in case of necessity of which the Executive Council shall be the sole judge, the Executive Council may allow a subscriber an advance of a sum not exceeding the total amount subscribed by him at a rate of interest one per cent higher than the rate at which interest is credited to subscribers

(ii) Recoveries towards the amount advanced shall be made with interest in monthly instalments not exceeding thirty as may be decided by the Executive Council commencing from the first payment of a full month's salary after the advance is granted, but no recovery shall be made from a subscriber when he is on leave otherwise than on full pay.

(iii) When a subscriber has already taken an advance, he shall not be eligible for a fresh advance until the amount already advanced has been fully paid up

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prior to the 19th day of June, 1928, be governed and regulated by the original

State made in that behalf on the 24th day of September, 1922, by the Governor-General in Council in exercise of the power conferred on him by Section 47.

Note.—In the foregoing use of the word "University" means the amount paid by the Government and contributions from the amount contributed by the University.

33 General provisions relating to Colleges (Section 28 (g)) —(1) Save as otherwise provided in the Act, all Degree Colleges shall be in close proximity to one another and to the University and shall ordinarily be located on the University estate.

Provided that the Executive Council shall have the power to exempt from the provisions of the foregoing clause temporarily, or if necessary, permanently, a College which is unable to comply therewith for want of a suitable site or an adequate grant in aid for building or maintenance.

(2) Management.—Every recognised College shall be a public educational institution, the whole of its funds shall be appropriated to its own educational purposes and shall be fully controlled by its Governing Body.

(3) Each College recognised by the University shall be managed by a regularly constituted and at least two other members of the staff including the University. The rules

relating to the constitution and powers of the Governing Body and the appointment, powers and duties of the Chairman and other officers of the Governing Body shall be such as may be prescribed by the Ordinances.

(4) Any change in the constitution, powers or personnel of the Governing Body shall be such as may be prescribed by the Ordinances.

(5) Every College shall have a duly constituted body representative of the teaching staff, to advise the Principal in the administration of the College.

(7) Every College shall satisfy the Executive Council that adequate financial provision is available for its continued and efficient maintenance, either in the form of an endowment or by an undertaking given by the person or body maintaining it.

(8) Tuition and other fees fixed by a College shall not be below the minimum rates prescribed by the Ordinances in this behalf.

(9) Every College shall maintain such registers and records as may be prescribed by the Ordinances and furnish such statistical and other information as the University may, from time to time, specify.

(10) Every College shall submit each year by a date to be fixed by the Executive Council a report to the Executive Council on the working of the College during the previous year, giving the particulars and circumstances of any change in the staff or the management, the number of students and a statement of income and expenditure and such other information as may be required.

(11) Every College shall make a statement of its income and expenditure on or before the 15th day of October in each year to take effect from the 1st day of January following.

(12) A College applying for recognition shall satisfy the University on the following points—

(a) that it guarantees a satisfactory standard of educational efficiency for the purpose for which recognition is sought, and that it is established on a permanent basis

(b) that its financial resources are such as to make due provision for its continued maintenance,

(c) that it is under proper management and is suitably organised,

(d) that its buildings are suitable and sufficient,

(e) that the furniture and library and laboratory equipment are adequate,

(f) that the provision for the residence, discipline and supervision of students is satisfactory.

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(13) A College applying for recognition shall give full information in the application on the following matters —

(a) constitution and personnel of its Governing Body,
 (b) standards and subjects in respect of which recognition is sought,
 (c) accommodation, library and laboratory equipment and strength of the College;
 (d) number, qualifications, work, emoluments and conditions of service of teachers;
 (e) provision for hostels, playgrounds and the residence of the Principal and other members of the staff,

(f) ~~from~~ ~~maintenance~~ maintenance of the College,
 (g) ~~may be~~ prescribed by the Ordinances
 (h) ~~may be~~ prescribed by the Ordinances

(14) Every College shall comply with the relevant Statutes, Ordinances and Regulations of the University

(15) Recognition shall in no case be granted with retrospective effect, beyond the date on which the application was made

(16) Where a College desires to raise the standard or alter the subjects in respect of which it is recognised, the procedure hereinbefore prescribed shall, so far as applicable, be followed

(17) *Teaching staff*—Every College shall maintain a minimum number of teachers —

... and whatsoever arising out of a contract
 ... a recognised College and a member of its teaching staff including the Principal shall be referred to the arbitration of an Appeal Committee of independent persons appointed by the ...
 ... matters under ...

... the Appeal Committee
 ... the terms of the agreement,
 ... the Appeal Committee shall be final and binding on both parties and the Arbitration Act, 1940 (X of 1940), shall apply to such arbitration
 Provided that this clause shall not apply to ...
 ... arising in ...
 ... member ...
 ... temporary

(18) Every College shall maintain rolls of students ...
 to students ...
 the rolls shall

(19) In the case of a College for women the staff shall, as far as possible, be composed of women only

... students—Admission ...
 ... a College shall be subject to the University terms,
 ... behalf ...
 ... to the University terms,

(26) *Residence, health and discipline*—Every College shall make adequate provision for the residence of its students not residing with their parents or recognised persons, and shall also make adequate provision for the health and discipline of its students.

Health and Discipline

(27) The conditions of residence in a College shall be prescribed by the Ordinances and every College shall be subject to inspection by any member of the Residence, Health and Discipline Board authorised in this behalf by the Board and by any other person authorised in this behalf by the Executive Council.

(28) Every College to which women students as well as men are admitted shall provide separate reading and retiring rooms and other necessary conveniences for women students.

(29) *Inspection and enquiry*—The Academic Council shall provide for the periodical inspection of each College in respect of the instruction, education and discipline therein and shall submit reports thereon to the Executive Council.

(30) The Executive Council may, whenever necessary, cause an inspection of a College to be made by such person or persons as it may deem fit.

(31) The Executive Council shall also have the power to cause an enquiry to be made in respect of any matter connected with a College. In every case notice shall be given to the management of the College of the intention to cause an enquiry to be made and the management shall be entitled to be represented thereat.

(32) The Executive Council may, on the report of the Academic Council, or as the result of the inspection or the enquiry made under the foregoing clauses

as directed within such period as may be fixed

(33) *Withdrawal of recognition*—The Executive Council may, after due enquiry and after consultation with the Academic Council, by a majority of all the then members of the Executive Council withdraw the recognition granted to a College which has failed to comply with the conditions prescribed by the Statutes and Ordinances or imposed by the Executive Council at the date of recognition or at any subsequent date. The Executive Council shall give the College an opportunity of being heard before making such decision.

draw recognition, and the decision of the Central Government on the appeal shall be final.

(34) *Budget of financial requirements*—Every College shall submit on or before 15th November each year a full statement of its financial requirements to the Executive Council for submission to the Central Government.

(35) When a College ceases to exist with the sanction of the University, the disposal of its assets, where not specifically provided for, shall be settled by the Governing Body, the University and the Central Government in consultation. If these bodies should fail to reach an agreement, the Central Government shall appoint an arbitrator whose decision shall be final.

(36) Every Governing Body shall maintain a Provident Fund for the benefit of members of its teaching staff, in accordance with rules prescribed by the Central Government.

(37) All trust funds belonging to the College or under the control of the Governing Body shall be shown separately in the accounts of the College.

(38) Investment of funds belonging to the College or under the control of the Governing Body shall be made in property and securities authorised by law for the investment of trust funds or such other classes of security as may, from time to time, be approved by the Central Government.

34 *Instruction provided by Colleges* [section 2 (a)]—(1) A College shall provide instruction in such subjects and up to such standard as it may be authorised to do from time to time by the Executive Council on the advice of the Academic Council

(2) Where a College desires to raise the standard or alter the subjects of instruction in respect of which it is recognised the procedure prescribed in respect of its recognition shall as far as applicable be followed

(3) A College may not without the previous permission of the Executive Council and the Academic Council suspend instruction in any subject which it is authorised to teach

(4) All recognised teaching in connection with the University courses shall be conducted under the control of the Academic Council by teachers of the University (section 7)

(5) Recognised teachers of the University shall be members of the staff of a recognised College of the University recognised by the Executive Council as Professors Readers or Lecturers or otherwise as teachers of the University whose teaching in their own College in subjects for which they are recognised shall be regarded as recognised teaching in Courses of Study pursued in the University (Statute 21)

(6) No person shall be recognised by the Executive Council as a teacher of the University except on the recommendation of the Committee of Selection constituted for the purpose (Statute 17)

(7) The number of recognised teachers in a College their qualifications emoluments and the conditions of their service shall be such as may be determined by the Ordinances

(8) The council Th
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prescribed by the Ordinances may be provided on a basis of co operation among the Colleges or among the Colleges and the University

(9) Teaching in the B A Honours and Post graduate courses may be organised by the Academic Council on a basis of co operation between the University and the Colleges or among the Colleges themselves through the Deans of Faculties concerned and co ordinated by the Board of Co ordination The principle of co operative teaching may likewise be extended to the B A Pass in some selected departments or subjects where the small size of the classes makes its application possible or the nature of the subjects might makes it desirable Lectures delivered by a recognised teacher of a College under this clause or by an appointed teacher of the University shall be open to all students pursuing the course of study concerned in any College in the University

(10) Arrangements for teaching other than B A Honours Post graduate courses and the courses of study in B A Pass on a co operative basis scheduled in the Ordinances according to the foregoing clause shall be made by the Principal of a recognised College for the students of his own College The time table of each College for co operation with the Deans

of students of his own College may be open to students of any other College or Colleges either by mutual agreement between the Colleges concerned, or under the direction of the Academic Council after securing the consent of the authorities of the College to which the teacher belongs

(12) Every College shall be subject to inspection from time to time in respect of the instruction education and discipline therein by one or more persons appointed by the Executive Council The Executive Council may on the report of the inspectors make such action as may be specified and the College shall take action as directed within such period as may be fixed

35 There shall be a Board of Diploma Courses in Domestic Sciences The constitution powers and duties of the Board shall be prescribed by the Ordinances

The following Bills were introduced in the Legislative Assembly on the 26th July 1943 —

L. A. BILL No. 20 OF 1943

A Bill further to amend the Indian Boilers Act, 1923

WHEREAS it is expedient further to amend the Indian Boilers Act, 1923 (V of 1923), so as to extend to feed pipes the provisions thereof relating to steam pipes, It is hereby enacted as follows —

1 Short title —This Act may be called the Indian Boilers (Amendment) Act 1943

2 Amendment of section 2 Act I of 1923 —In section 2 of the Indian Boilers Act 1923 (V of 1923) (hereinafter referred to as the said Act), after clause (c) the following clause shall be inserted, namely —

“(cc) feed pipe means any pipe or connected fitting wholly or partly under pressure through which feed water passes directly to a boiler;”

3 Insertion of new section 24 in Act I of 1923 —After section 2 of the said Act, the following section shall be inserted, namely —

“24 Application of Act to feed pipes —Every reference in this Act [except where the word steam pipe is used in clause (f) of section 2] to a steam pipe or steam pipes shall be deemed to include also a reference to a feed pipe or feed-pipes respectively

STATEMENT OF OBJECTS AND REASONS

The Indian Boilers Act, 1923 does not provide for the inspection and general regulation of the boiler feed water system. A recent serious accident was due to the explosion of an economiser which is part of the feed water system. The explosion was caused by the failure of the economiser tubes due to weakness caused by internal corrosion. The tubes of the economiser had been subject to no regular inspection and had been allowed to deteriorate. It is accordingly considered that provision should be made in the Indian Boilers Act for inspection of the boiler feed water system. The Bill makes this provision.

B. R. AMBEDKAR

NEW DELHI

The 15th July 1943

L. A. BILL No. 21 OF 1943 *

A Bill to amend the Reciprocity Act 1943

WHEREAS it is expedient to amend the Reciprocity Act 1943 (IX of 1943) for the purposes hereinafter appearing

It is hereby enacted as follows —

1 Short title —This Act may be called the Reciprocity (Amendment) Act 1943

2 Amendment of section 2, Act IX of 1943 —In section 2 of the Reciprocity Act 1943 (hereinafter referred to as the said Act) for clause (a) the following clause shall be substituted, namely —

“(a) ‘British possession’ means any part of His Majesty’s dominions exclusive of British India and includes a protectorate or other territory administered by a British possession as a mandatory on behalf of the League of Nations, and where parts of those dominions are under both a central and a local legislature the expression shall mean either each part under a local legislature or all parts under the central legislature;

*The Governor General has been pleased to give the previous sanction required by clause (c) of sub-section (1) of section 108 read with sub-section (4) of section 313 of the Government of India Act 1935 to the introduction in the Legislative Assembly of this Bill

3 *Substitution of new section for section 3, Act IX of 1943*—For section 3 of the said Act, the following section shall be substituted, namely—

3 *Lower of Central Government to impose reciprocal disabilities on persons domiciled in British possessions*—Where by the law or practice of any British possession persons of Indian origin are subject in that British possession to disabilities in respect of entry into or travel residence the acquisition holding or disposal of property the enjoyment of educational facilities the holding of public office the carrying on of any occupation trade business or profession or the exercise of the franchise in that British possession to which in respect of the like matters in British India persons domiciled in that British possession are not subject in British India the Central Government may by notification in the official Gazette direct that the same disabilities or disabilities as similar thereto as may be shall notwithstanding anything contained in any other law for the time being in force be imposed in British India on persons not being of Indian origin who are domiciled in that British possession

4 *Substitution of new section for section 5 Act IX of 1943*—For section 5 of the said Act the following section shall be substituted, namely—

5 *Direction imposing disabilities in respect of entry, travel and residence not to apply to armed forces*—Any direction made by the Central Government under section 3 imposing disabilities in respect of entry into or travel or residence in British India upon persons domiciled in a British possession shall not until the expiry of one year after the termination of the present hostilities apply to any person domiciled in that British possession who is a member of its armed forces

5 *Substitution of new section for section 6 Act IX of 1943*—For section 6 of the said Act the following section shall be substituted namely—

6 *Power to make rules*—(1) The Central Government may by notification in the official Gazette make rules for carrying out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power rules made under this section may provide—

(a) for the setting up of machinery to ascertain the disabilities in respect of any of the matters specified in section 3 to which persons of Indian origin are subject in any British possession,

(b) for the establishment of a suitable agency to administer the rules and for defining its functions and powers

(c) for specifying the disabilities that shall, when a direction has been made under section 3 be imposed in British India on persons not being of Indian origin who are domiciled in any British possession and for the imposition on them of the disabilities so specified,

(d) for the enforcement by the prescription of a penalty by way of imprisonment or fine or both of any rule made under clause (c)

(e) for authorising the arrest of any person contravening or reasonably suspected of contravening any rule made under clause (c) and for prescribing the duties of public servants and others in regard to such arrests

6 *Substitution of new section 7 to Act IX of 1943*—After section 6 of the said Act as substituted by the foregoing section the following section shall be added namely—

7 *Repeal of Act III of 1924*—The Immigration into India Act, 1924 (III of 1924) is hereby repealed

STATEMENT OF OBJECTS AND REASONS

The Reciprocity Act (No IX of 1943) as it stands is virtually unworkable in practice. In order to make it effective and to carry out the intention of the Legislature in passing that Act it has been found necessary to amend it

Section 3 of the existing Act is merely declaratory as to the issue of a notification under Section 3 and does not enable the Government to put down under the operation of Section 3 public and private securities issued in India by persons domiciled in the United Kingdom.

It is also desired whether to include in the making of rules for the effective production of the securities referred to in Section 3.

No provision has been made in the Act for the imposition of penalties for the breach of any conditions or obligations imposed under any rules which may be framed under Section 6 of the Act.

The object of the amending Bill is to remove these defects.

S. B. KHARE.

New Delhi,

The 29th July 1943

L. A. Bill No. 22 of 1943.

1. To consolidate and amend the law relating to Government securities issued by the Central Government and to the management by the Reserve Bank of India of the public debt of the Central Government.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities issued by the Central Government and to the management by the Reserve Bank of India of the public debt of the Central Government,

It is hereby enacted as follows:—

1 Short title, extent and commencement.—(1) This Act may be called the Public Debt (Central Government) Act, 1943.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2 Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) 'the Bank' means the Reserve Bank of India,

(2) 'Government security' means—

(a) a security, created and issued, whether before or after the commencement of this Act, by the Central Government for the purpose of raising a public loan, and having one of the following forms, namely:—

(i) stock transferable by registration in the books of the Bank, or

(ii) a promissory note payable to order, or

(iii) a bearer bond payable to bearer, or

(iv) a form prescribed in this behalf,

(b) any other security created and issued by the Central Government in such form and for such of the purposes of this Act as may be prescribed,

(3) 'prescribed' means prescribed by rules made under this Act,

(4) 'promissory note' includes a treasury bill.

3 Transfer of Government securities.—(1) Subject to the provisions of section 4, a transfer of a Government security shall be made only in the manner prescribed for the making of transfers of securities of the class to which it belongs, and no transfer of a Government security shall be valid if—

(a) it does not purport to convey the full title to the security, or

(b) it is of such a nature as to affect the manner in which the security was transferred by the Central Government to be held.

(2) Nothing in this section shall affect any order made by the Bank, or any order made by a Court upon the Bank.

4 Transfer of Government securities not liable for amount thereof.—Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (XXVI) of

The Governor General has been pleased to give the previous sanction required by section 3 of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

3 *Substitution of new section for section 3, Act IX of 1943.*—For section 3 of the said Act, the following section shall be substituted, namely —

3 *Power of Central Government to impose reciprocal disabilities on persons domiciled in British possessions*—Where by the law or practice of any British possession persons of Indian origin are subject in that British possession to disabilities in respect of entry into, or travel, residence, the acquisition, holding or disposal of property, the enjoyment of educational facilities, the holding of public office the carrying on of any occupation trade, business or profession or the exercise of the franchise in that British possession to which in respect of the like matters in British India persons domiciled in that British possession are not subject in British India, the Central Government may by notification in the official Gazette direct that the same disabilities or disabilities as similar thereto as may be shall, notwithstanding anything contained in any other law for the time being in force be imposed in British India on persons not being of Indian origin who are domiciled in that British possession.

4 *Substitution of new section for section 5, Act IX of 1943*—For section 5 of the said Act the following section shall be substituted, namely —

5 *Direction imposing disabilities in respect of entry, travel and residence not to apply to armed forces*—Any direction made by the Central Government under section 3 imposing disabilities in respect of entry into or travel or residence in British India upon persons domiciled in a British possession shall not, until the expiry of one year after the termination of the present hostilities apply to any person domiciled in that British possession who is a member of its armed forces.

5 *Substitution of new section for section 6, Act IX of 1943*—For section 6 of the said Act, the following section shall be substituted, namely —

'6 *Power to make rules*—(1) The Central Government may by notification in the official Gazette, make rules for carrying out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power rules made under this section may provide—

(a) for the setting up of machinery to ascertain the disabilities in respect of any of the matters specified in section 3 to which persons of Indian origin are subject in any British possession,

(b) for the establishment of a suitable agency to administer the rules and for defining its functions and powers,

(c) for specifying the disabilities that shall, when a direction has been made under section 3 be imposed in British India on persons not being of Indian origin who are domiciled in any British possession and for the imposition on them of the disabilities so specified,

(d) for the enforcement by the prescription of a penalty by way of imprisonment or fine or both of any rule made under clause (c),

(e) for authorising the arrest of any person contravening or reasonably suspected of contravening any rule made under clause (c), and for prescribing the duties of public servants and others in regard to such arrests.

6. *Addition of new section 7 to Act IX of 1943*—After section 6 of the said Act as substituted by the foregoing section, the following section shall be added, namely —

'7 *Repeal of Act III of 1924*—The Immigration into India Act, 1924 (III of 1924) is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Reciprocity Act (No. IX of 1943) as it stands is virtually unworkable in practice. In order to make it effective and to carry out the intention of the Legislature in passing that Act it has been found necessary to amend it.

Section 3 of the existing Act is merely declaratory and the issue of a notification under Section 4 does not automatically set it down under the operation of Section 5 rights and privileges enjoyed in India by persons domiciled in the so-called British provinces.

It is also desirable that other Sections 6 & 7 limits of the making of rules for the effect of the provisions of the existing Act are given in Section 9.

No provision has been made in the Act for the imposition of penalties for the breach of any directions or orders or imposed under any rules which may be framed under Section 6 of the Act.

The object of the amending Bill is to remove these defects.

N B KHARE

NEW DELHI.

The 20th July, 1913

L. A. Bill No. 22 of 1913.

Bill to consolidate and amend the law relating to Government securities issued by the Central Government and to the management by the Reserve Bank of India of the public debt of the Central Government.

WHEREAS it is expedient to consolidate and amend the law relating to Government securities issued by the Central Government and to the management by the Reserve Bank of India of the public debt of the Central Government,

It is hereby enacted as follows:—

1 Short title, extent and commencement.—(1) This Act may be called the Public Debt (Central Government) Act, 1913.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2 Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) the Bank means the Reserve Bank of India,

(2) 'Government security' means—

(a) a security, created and issued, whether before or after the commencement of this Act, by the Central Government for the purpose of raising a public loan, and having one of the following forms, namely:—

(i) stock transferable by registration in the books of the Bank, or

(ii) a promissory note payable to order, or

(iii) a bearer bond payable to bearer, or

(iv) a form prescribed in this behalf,

(b) any other security created and issued by the Central Government in such form and for such of the purposes of this Act as may be prescribed,

(3) 'prescribed' means prescribed by rules made under this Act,

(4) 'promissory note' includes a treasury bill.

3 Transfer of Government securities.—(1) Subject to the provisions of section 5 a transfer of a Government security shall be made only in the manner prescribed for the making of transfers of securities of the class to which it belongs and no transfer of a Government security shall be valid if—

(a) it does not purport to convey the full title to the security, or

(b) it is of such a nature as to affect the manner in which the security was expressed by the Central Government to be held.

(2) Nothing in this section shall affect any order made by the Bank, or any order made by a Court upon the Bank.

4 Transfer of Government securities not liable for amount thereof.—Notwithstanding anything contained in the Negotiable Instruments Act 1881 (XXVI of

The Governor General has been pleased to give the previous sanction required by section 153 of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

(3) A Magistrate or an officer of the Bank acting in pursuance of this section may administer an oath to any witness examined by him

15 *Postponement of payments and registration of transfers pending the making of a vesting order*—Where the Bank contemplates making an order under this Act to vest a Government security in any person the Bank may suspend payment of interest on or the maturity value of the security or postpone the making of any order under section 11 or the registration of any transfer of the security until the vesting order has been made

16 *Power of Bank to require bonds*—(1) Before making any order which it is empowered to make under this Act, the Bank may require the person whose favour the order is to be made to execute a bond with one or more securities in such form as may be prescribed or to furnish security not exceeding twice the value of the subject-matter of the order to be held at the disposal of the Bank, to pay to the Bank or any person to whom the Bank may assign the bond or security in furtherance of sub-section (2) the amount thereof

(2) A Court before which a claim in respect of the subject-matter of any such order is established may order the bond or security to be assigned to the successful claimant who shall thereupon be entitled to enforce the bond and realise the security to the extent of such claim

17 *Publication of notices in official Gazette*—Any notice required to be given by the Bank under this Act may be served by post but every such notice shall also be published by the Bank in the official Gazette and on such publication shall be deemed to have been delivered to all persons for whom it is intended

18 *Scope of vesting order*—An order made by the Bank under this Act may confer the full title to a Government security or may confer a title only to the accrued and accruing interest on the security pending a further order vesting the full title

19 *Legal effect of orders made by the Bank*—No recognition by the Bank of a person as the holder of a Government security, and no order made by the Bank under this Act shall be called in question by any Court so far as such recognition or order affects the relations of the Central Government or the Bank with the person recognised by the Bank as the holder of a Government security or with any person claiming an interest in such security and any such recognition by the Bank or any person or any order by the Bank vesting a Government security in any person shall operate to confer on that person a title to the security subject only to a personal liability to the rightful owner of the security for money had and received on his account

20 *Stay of proceedings on order of Court*—Where the Bank contemplates making with reference to any Government security any order which it is empowered to make under this Act and before the order is made the Bank receives from a Court in British India an order to stay the making of such order the Bank shall either—

(a) hold the security together with any interest unpaid or accruing thereon until the further orders of the Court are received or

(b) apply to the Court to have the security transferred to the Official Trustee appointed for the Province in which such Court is situated pending the disposal of the proceedings before the Court

21 *Cancellation by the Bank of vesting proceedings*—Where the Bank contemplates making an order under this Act vesting a Government security in any person the Bank may at any time before the order is made cancel any proceedings already taken for that purpose and may on such cancellation proceed anew to the making of such order

22 *Discharge in respect of interest on Government securities*—Save as otherwise expressly provided in the terms of a Government security no person shall be entitled to claim interest on such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security

23 Discharge in respect of bearer bonds.—The Central Government shall be discharged from all liability in respect of any interest coupon of such bond on payment to the holder of such bond or coupon in presentation on or after the date when it becomes due of the amount expressed therein unless before such payment is made a Court in British India has been served on the Central Government restraining it from making payment.

24 Period of limitation of Central Government's liability in respect of Government securities.—Where no other period of limitation is fixed by any law or the time being in force, the liability of the Central Government in respect of a Government security and of any interest payment due on it shall terminate on the expiry of six years from the date on which the amount due on the security or due by way of interest on the security as the case may be becomes payable.

25 Inspection of documents.—No person shall be entitled to inspect, or to receive information derived from, any Government security in the possession or custody of the Central Government or from any book, register, or other document kept or maintained by or on behalf of the Central Government in relation to Government securities or any Government security, save in such circumstances and manner and subject to such conditions as may be prescribed.

26 The Bank and its officers to be deemed public officers.—For the purposes of section 124 of the Indian Evidence Act 1872 (I of 1872), the provisions of Part IV of the Code of Civil Procedure, 1909 (V of 1909), relating to suits by or against public officers in their official capacity, and the provisions of rule 27 of Order V and rule 52 of Order XXI of the said Code, the Bank and any officer of the Bank acting in his capacity as such shall be deemed to be a public officer.

27. Penalty.—(1) If any person, for the purpose of obtaining for himself or for any other person any title to a Government security, makes to any authority under this Act in any application made under this Act or in the course of any inquiry undertaken in pursuance of this Act any statement which is false and which he either knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

(2) No Court shall take cognisance of any offence under sub-section (1) except on the complaint of the Bank.

28. Power to make rules.—(1) The Central Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the forms in which Government securities may be issued,
(b) the form of the obligations referred to in sub-clause (iv) of clause (b) of section 2,

(c) the conditions subject to which Government securities may be issued to the rulers of Indian States,

(d) the manner in which different forms of Government securities may be transferred,

(e) the holding of Government securities in the form of stock by the holders of offices other than public offices and the manner in which and the conditions subject to which Government securities so held may be transferred

(f) the manner in which payment of interest in respect of Government securities is to be made and acknowledged

(g) the conditions governing the grant of duplicate and new converted consolidated and sub-divided Government securities,

(h) the fees to be paid in respect of the issue of duplicate Government securities and of the renewal, conversion, consolidation and sub-division of Government securities,

(i) the form in which receipt of a Government security delivered for discharge, renewal, conversion, consolidation or subdivision is to be acknowledged,

(j) the manner of attestation of documents relating to Government securities in the form of stock,

(k) the manner in which any document relating to a Government security or any endorsement on a promissory note issued by the Central Government may, on the demand of a person who from any cause is unable to write, be executed on his behalf,

(l) the form of the bonds referred to in sub section (1) of section 16,

(m) the circumstance and the manner in which and the conditions subject to which inspection of Government securities books registers and other documents may be allowed or information therefrom may be given under section 25,

(n) the procedure to be followed in making vesting orders

29. Act X of 1920 not to apply to Government securities.—The Indian Securities Act 1920 (X of 1920) shall cease to apply to Government securities to which this Act applies and to all matters for which provision is made by this Act

STATEMENT OF OBJECTS AND REASONS

The great bulk of Government obligations in India have till very recently been expressed in the form of promissory notes which pass from hand to hand by endorsement and delivery. Stock certificates, i.e., certificates which are not negotiable themselves but merely record title, the actual transfers requiring registration in the books of the Public Debt Office, are of comparatively recent introduction. Not unnaturally therefore the law of Government securities in India started as an appendage to the law of Negotiable Instruments modifying it where necessary to meet the peculiar circumstances of Government promissory notes such as (1) their validity for a period much longer than that of the ordinary negotiable instrument of commerce and the concomitant necessity of issuing separate instruments to replace the original in the record of interest payments, and (2) their being held more widely than ordinary negotiable commercial instruments by various classes of investors in addition to the financial and business community. The fact that Government loans were almost entirely in the form of promissory notes meant that the special modifications of the law effected from time to time to meet practical difficulties only related to Government obligations held in this form, with the result that when the previous legislation was revised in the Act of 1920 a clear distinction was not always drawn between those parts of the law which ought to relate to Government securities as a whole and those which merely related to promissory notes. A striking instance of this is provided by section 13 providing for the summary provisional settlement of disputes which is confined only to promissory notes. Although logically imperfect this position did not in the past lead to any practical difficulties as the holders of Government loans in the form of stock certificates were comparatively few. As a result of war conditions however, and the efforts of the Reserve Bank as agents of Government in the management of public debt to popularise stock certificates in the interest of safety and administrative convenience the proportion of Government loans held in the form of stock certificates or in special subsidiary ledger accounts which the Bank has undertaken to maintain for large institutional holders has substantially increased and the time appears to be opportune for recasting the provisions of the Indian Securities Act 1920 so as to provide more satisfactorily for the management of Central public debt.

2. Apart from the fact that section 13 of the 1920 Act fails to provide for the summary provisional settlement of disputes regarding Government loans in all cases other than as promissory notes the machinery which it provides is in itself incomplete and there have been numerous cases where on account of a disputant contenting himself with the mere issue of a notice of dispute

to the Public Debt Office and abstaining from prosecuting his claim in a court of law or on account of vague stop orders emanating from Courts the periodical payment of interest has been held up for unconscionably long periods much to the annoyance and prejudice of the actual holder. There have also been numerous instances in which where the matter has been taken to Court Government and the Reserve Bank have been made parties to what was essentially a dispute between two private parties in the decision of which Government or the Bank had no interest. It is therefore considered desirable to recast this part of the law so as to provide for a summary adjudication by the Reserve Bank of disputes as to the title to be the holder of a security, with a necessary safeguard by way of a guarantee of indemnity to ensure that the interests of the party who may ultimately succeed in establishing in a court of law his right to hold the security are not prejudiced.

3 The legislative competence of the Central Legislature extends however only to legislation affecting public debt of the Central Government while the public debt of a Province is subject to legislation in the Provincial Legislature only. The Act of 1920 which regulates public debt of both kinds is amenable to amendment by the Central Legislature only in so far as it deals with public debt of the Central Government. The present legislation therefore takes the form of a Bill to be enacted as a separate Act applicable only to securities of the Central Government which will reproduce the provisions of the 1920 Act with amendments designed to remedy the defects already referred to and with certain other amendments the necessity or desirability of which is suggested by experience in the administration of the Act during the last two decades. In this reproduction of the provisions of the 1920 Act those provisions have been rearranged so as to group together sections dealing with the incidents common to the different forms in which loans of the Central Government are held and to relegate to separate sections the incidents peculiar to negotiable instruments.

A. J. RAISMAN

NEW DELHI

The 15th July 1943

L A BILL No 23 of 1943

A Bill to amend the Mines Maternity Benefit Act 1941

WHEREAS it is expedient to amend the Mines Maternity Benefit Act 1941 (XIX of 1941) for the purpose hereinafter appearing

It is hereby enacted as follows —

1 *Short title* — This Act may be called the Mines Maternity Benefit (Amendment) Act 1943

2 *Amendment of section 5 Act XIX of 1941* — In section 5 of the Mines Maternity Benefit Act, 1941 (XIX of 1941),—

(a) the words 'on which she is absent from work owing to her confinement' shall be omitted,

(b) the following proviso shall be added namely —

Provided that no such payment shall be made for any day on which she attends work and receives payment therefor during the four weeks preceding her delivery

STATEMENT OF OBJECTS AND REASONS

In section 3 of the Mines Maternity Benefit Act 1941 the period preceding the delivery, for which a woman is entitled to maternity benefit is defined to be every day on which she is absent from work owing to her confinement during the four weeks immediately preceding and including the day of her delivery. It has been brought to notice that the words 'absent from work owing to her confinement' would not apply in respect of a day on which the mine is closed. The intention of Government was that the woman should receive maternity

B R AMBEDKAR.

The 10th July 1913

L A BILL No 24 OF 1943 *

A Bill to amend the Motor Vehicles (Drivers) Ordinance, 1942

It is hereby enacted as follows —

¹ *Short title*—This Act may be called the Motor Vehicles (Drivers) Amendment Act, 1948

2 *Insertion of a new section 6A in Ordinance V of 1942*—After section 6 of the Motor Vehicles (Drivers) Ordinance 1942 (V of 1942) (hereinafter referred to as the said Ordinance), the following section shall be inserted, namely:—

'6A (I) It shall be the duty of any employer by whom a person, who has been required by an order under sub section (I) of section 4 to perform any service was employed to reinstate him in his former employment on the termination of that service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been required to perform that service

Provided that if the employer refuses to restate such person or denies his liability to restate such person or if for any reason the reinstatement of such person is represented by the employer to be impracticable either party may refer the matter to the authority authorised in this behalf by the Provincial Government and such authority shall after due consideration pass an order either exempting the employer from the provisions of this sub section or require him to re employ such person on such terms as it thinks suitable or to pay to such person a sum in compensation for failure to re employ him not exceeding an amount equal to six months' remuneration at the rate at which his remuneration was payable to him by the employer.

(2) If any employer fails to obey an order passed under the proviso to section (1) by the authority authorised under that proviso, he shall be punished with fine which may extend to one thousand rupees and the Court by which he is convicted may in addition to any other penalty order him (if he is not already so required by the said authority) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer and any amount so required by the said authority to be paid or so ordered by the Court to be paid, shall be recoverable as if it were a fine imposed by the Court.

Provided that in any proceedings under this sub-section it shall be a defence for an employer to prove that the person formerly employed by him had not been in his continuous employment for six months or did not apply to him for reinstatement within a period of two months from the termination of the service in which such person was required to perform by an order under sub-section (1) of section 1.

(3) The duty imposed by sub section (1) upon an employer to restate his employment a person such as is described in that sub section shall attach to an employer who before such person is actually required to present himself for service or to perform service under this Ordinance terminates his employment in circumstances such as to indicate an intention to evade the duty imposed

*The Governor General has been pleased to give the President's assent to the Bill on the recommendation of the Council of Ministers of the Government of India Act 1935, to the Legislative Assembly of the P. U.

by that sub section and such intention shall be presumed until the contrary is proved if the termination of the employment takes place after the delivery of an order under sub section (1) of section 4 to such person "

3 Amendment of section 8 Ordinance I of 1912—In sub section (2) of section 8 of the said Ordinance, after clause (c) the following clause shall be added namely —

(d) the manner of making reference under the proviso to sub section (1) of section 6A "

STATEMENT OF OBJECTS AND REASONS

The Motor Vehicles (Drivers) Ordinance, 1912 (V of 1912) authorises requisitioning of the services of persons capable of driving a motor vehicle but does not provide for their reinstatement on termination of the compulsory service under the Ordinance in their former employments on the same terms as before. It is considered desirable that such a provision should be made. The Bill makes this provision and also safeguards the position of an employee who is about to be called up for service and who is dismissed by his employer in order to evade the liability to reinstate him.

B R AMBEDKAR

NEW DELHI

The 13th July 1913

L A Bill No 25 of 1913 *

1 Bill further to amend the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898 (V of 1898), for the purposes hereinafter appearing,

It is hereby enacted as follows —

1 Short title —This Act may be called the Code of Criminal Procedure (Amendment) Act, 1913

2 Amendment of section 503, Act V of 1898 —In section 503 of the Code of Criminal Procedure, 1898 (V of 1898) (hereinafter referred to as the said Code),—

(a) for sub section (2), the following sub section shall be substituted namely —

"(2) When the witness resides in an Indian State the commission may be issued the Political Agent for such State, and when commission may be issued to the officer of powers of a District Magistrate in, or in

such area,

(b) for sub section (4), the following sub section shall be substituted, namely —

"(4) Where the commission is issued to such officer as is mentioned in sub section (2) he may, in lieu of proceeding in the manner laid down in sub section (3),—

(a) delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India, or

(b) where the commission is for a witness residing in an any, recognised by the as a Court to which in the local limits of

*The Governor General has been pleased to give the previous sanction required by section 108 (1) (c) read with section 313 (4) (a) of the Government of India Act 1935 to the introduction of this Bill in the Legislative Assembly

benefit for every day, except on days on which she attends work and receives payment therefor during the period referred to. This Bill seeks to give effect to this intention and remove the existing doubtful position.

B R AMBEDKAR.

NEW DELHI,

The 10th July, 1943

L A BILL No 24 of 1943 *

A Bill to amend the Motor Vehicles (Drivers) Ordinance, 1942

WHEREAS it is expedient to amend the Motor Vehicles (Drivers) Ordinance 1942 (V of 1942), for the purposes hereinafter appearing,

It is hereby enacted as follows —

1 *Short title* — This Act may be called the Motor Vehicles (Drivers) Amendment Act, 1943

2 *Insertion of a new section 6A in Ordinance V of 1942* — After section 6 of the Motor Vehicles (Drivers) Ordinance 1942 (V of 1942) (hereinafter referred to as the said Ordinance), the following section shall be inserted, namely —

“6A (1) It shall be the duty of any employer by whom a person, who has been required by an order under sub section (1) of section 4 to perform any service, was employed to reinstate him in his former employment on the termination of that service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been required to perform that service

Provided that if the employer refuses to reinstate such person, or denies his liability to reinstate such person or if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the authority authorised in this behalf by the Provincial Government and such authority shall after due consideration, pass an order either exempting the employer from the provisions of this sub section or requiring him to re employ such person on such terms as it thinks suitable or to pay to such person a sum in compensation for failure to re employ him not exceeding an amount equal to six months remuneration at the rate at which his last remuneration was payable to him by the employer

(2) If any employer fails to obey an order passed under the proviso to sub section (1) by the authority authorised under that proviso, he shall be punishable with fine which may extend to one thousand rupees and the Court by which he is convicted may in addition to any other penalty, order him (if he is not already so required by the said authority) to pay the person whom he has failed to re employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer and any amount so required by the said authority to be paid or so ordered by the Court to be paid, shall be recoverable as if it were a fine imposed by such Court

Provided that in any proceedings under this sub-section it shall be a defence for an employer to prove that the person formerly employed by him had not been in his continuous employment for six months or did not apply to him for reinstatement within a period of two months from the termination of the service which such person was required to perform by an order under sub section (1) of section 4

(3) The duty imposed by sub section (1) upon an employer to reinstate in his employment a person such as is described in that sub section shall attach to an employer who before such person is actually required to present himself for service or to perform service under this Ordinance terminates his employment in circumstances such as to indicate an intention to evade the duty imposed

*The Governor General has been pleased to give the previous sanction required by section 103 (1) (b) of the Government of India Act, 1935 to the introduction in the Legislative Assembly of this Bill

L. A. Bill No. 21 of 1943

A Bill further to amend the Code of Criminal Procedure, 1898.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898 (V of 1898), for the purposes hereinafter appearing :

It is hereby enacted as follows :—

1. *Short title*—This Act may be called the Code of Criminal Procedure (Amendment) Act, 1943.

2. *Amendment of section 503, Act V of 1898*—In section 503 of the Code of Criminal Procedure, 1898 (V of 1898) (hereinafter referred to as the said Code),—

(a) for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) When the witness is a person who is issued a commission by the District Magistrate in, or in

exercise of the powers of a District Magistrate in, or in

(b) for sub-section (3), the following sub-section shall be substituted, namely :—

“(3) Where the commission is issued to such officer as is mentioned in sub-section (2), he may, in lieu of proceeding in the manner laid down in sub-section

(a) delete the words “in the manner laid down in sub-section (2)” and substitute therefor the words “in the manner laid down in sub-section (3)”

(b) where the commission is for the purpose of examining a witness in an

any State, the commission shall be issued by the District Magistrate in, or in

under this sub-section, within the local limits of jurisdiction the witness resides”

The Governor General has been pleased to give the previous sanction required by section 108 (1) (c) read with section 313 (4) (a) of the Government of India Act, 1935, to the introduction of this Bill in the Legislative Assembly.

3 *Amendment of section 503, Act V of 1898*—In section 503 of the said Code—

(a) in sub section (1),—

(i) for the words "and the Magistrate", the following shall be substituted namely—

"and, except in a case to which clause (b) of sub section (4) of section 503 applies, the Magistrate",

(ii) after the words "such interrogatories" the following sentence shall be added, namely—

"In a case to which clause (b) of sub section (4) of section 503 applies the officer to whom the commission is issued shall forward such interrogatories to the Court to which he forwards the commission for execution",

(b) in sub section (2), for the word "officer" the following shall be substituted namely—

"except in a case to which clause (b) of sub section (4) of section 503 applies before such officer"

4 *Amendment of section 507, Act I of 1898*—In sub section (1) of section 507 of the said Code, after the words "duly executed", the following shall be inserted namely—

"or, in a case to which clause (b) of sub section (4) of section 503 applies has been again received by the officer by whom it was forwarded to the State Court",

STATEMENT OF OBJECTS AND REASONS

Section 503 of the Code of Criminal Procedure, 1898, provides that where the attendance of a necessary witness residing in an Indian State cannot be procured without unreasonable delay, expense or inconvenience, a commission may be issued for his examination to the officer representing the Crown Representative in that State. On receipt of the commission the officer is required to proceed to the place where the witness is or to summon him to appear before him for the purpose of taking down his evidence. He is also empowered to delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

2 As early as 1918 some States represented that this procedure was prejudicial to their interests and privileges, and suggested that provision should be made to enable such commissions to be executed by the State Courts instead of by Political Officers. The Conference of Ruling Princes and Chiefs held in 1919 recommended the introduction of such a provision on a reciprocal basis. A Bill designed to give effect to that recommendation was introduced and passed in the Council of

from time to time
ould be contrived

infringement of their prerogative right the exercise by Political Officers of a quasi-judicial function within their territory. The execution of a commission in a State far removed from the headquarters of the Political Officer charged with the task results in considerable inconvenience and expense either to the witness or to the Political Officer or to both. To avoid these difficulties in the execution of commissions Political Officers sometimes forward them to a State Court for execution although that procedure is not authorised by the law.

4 Section 21 of the Indian Extradition Act, 1903, enables a criminal Court in an Indian State to have commissions for the examination of witnesses executed by British Indian Courts. This Bill, by the amendment it proposes in sub section (4) of section 503 of the Code of Criminal Procedure, 1898, will authorise the Political

execute such commissions. At the same time by the amendment made in subsection (2) of section 201 an ambiguity in the reference to tribal areas has been removed. The other amendments proposed by the Bill are of a consequential character.

SIMLA.

A K ROY

The 21st July 1943

1. A Bill No. 26 of 1943 *

1. Bill further to amend the Agricultural Produce (Grading and Marking) Act, 1937.

WHEREAS it is expedient further to amend the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937) for the purposes hereinafter appearing,

It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Agricultural Produce (Grading and Marking) Amendment Act, 1943.

2. *Amendment of section 3, Act 1 of 1937.*—In clause (f) of section 3 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937), after the words 'marked with a grade designation mark', the following shall be inserted, namely:—

'or with measures for the control of the quality of articles marked with grade designation marks including testing of samples and inspection of such articles or with any publicity work carried out to promote the sale of any class of such articles'

STATEMENT OF OBJECTS AND REASONS

Expenditure under the Agricultural Produce (Grading and Marking) Act, 1937, falls mainly under two heads: expenditure in connection with the preparation of labels and expenditure on the supervision of grading. At the time the Act was before the Legislature in 1937, the intention was that expenditure on both these accounts should be recoverable from the trades whose commodities were graded under the Act. Government are advised that section 3(f) of the Act as it stands, covers only the cost to Government of manufacturing labels and that the cost of supervising grading and testing by sample taking, that is the cost of the measures necessary for the control of quality of *Agmark* products, cannot be recovered from the trades concerned without an expansion of section 3(f). The cost of inspection of grading has therefore hitherto been met by the Central Government. This is unobjectionable as an initial measure and until grading has become established in respect of any commodity, but the original intention was that such costs should eventually be recoverable and if the bringing of any new commodity under the *Agmark* scheme is to involve the Central Government in additional and permanent recurring financial liability, a limit will be reached to the commitments which can be undertaken under the Act and further development under the Act will be hampered if not stopped. It is therefore proposed to amend the Act so as to permit the recovery of the costs in question. The intention is that such a levy will be imposed only in the case of commodities the grading of which has so established itself that there is a steady demand for the graded produce and that it should be at rates fixed in consultation with the trade and sufficient to cover only the actual expenditure incurred by Government.

The opportunity is also being taken further to amend section 3(f) so as to provide for the recovery of the cost of trade publicity when undertaken by Government. Publicity is normally a function of the trade and not of Gov-

*The Governor General has been pleased to give the previous sanction required by sub-section (2) of section 67 of the Government of India Act as amended from repeal by paragraph 42 of the Government of India (Commencement and Transitional) Provisions Order 1946 the introduction of this Bill in the Legislative Assembly.

ernment, but many trades in India have no organisation of their own to arrange for the necessary publicity and advertisements. Such publicity will only be undertaken if Government are satisfied that the trade concerned generally favours it and as in the case of quality control recoveries will be at rates calculated to cover only the actual expenditure incurred by Government on publicity.

J D TYSON

NEW DELHI,

The 1st July 1943

L A BILL No 27 of 1943 *

A Bill further to amend the Indian Army Act 1911, and the Indian Air Force Act 1932

WHEREAS it is expedient further to amend the Indian Army Act 1911 (VIII of 1911) and the Indian Air Force Act 1932 (XIV of 1932) for the purposes hereinafter appearing

It is hereby enacted as follows —

1 *Short title* —This Act may be called the Indian Army and Indian Air Force (Amendment) Act 1943

2 *Amendment of section 50 Act VIII of 1911* —To clause (b) of sub section (1) of section 50 of the Indian Army Act 1911 (VIII of 1911) the following words and figure shall be added namely —

‘or by an officer exercising authority under section 20’

3 *Amendment of section 86 Act VIII of 1911* —In sub section (2) of section 86 of the Indian Army Act 1911 (VIII of 1911) the words ‘of desertion or’ shall be omitted

4 *Substitution of new section for section 109 Act VIII of 1911* —For section 109 of the Indian Army Act 1911 (VIII of 1911), the following section shall be substituted namely —

109 *Substitution of a valid finding or sentence for an invalid finding or sentence* —(1) Where a finding of guilty by a court martial which has been confirmed or which does not require confirmation is found for any reason to be invalid or cannot be supported by the evidence the authority which would have had power under section 112 to commute the punishment awarded by the sentence if the finding had been valid may substitute a new finding, if the new finding could have been validly made by the court martial on the charge and if it appears that the court martial must have been satisfied of the facts establishing the offence specified or involved in the new finding, and may pass a sentence for the said offence

(2) Where a sentence passed by a court martial which has been confirmed or which does not require confirmation not being a sentence passed in pursuance of a new finding substituted under sub section (1), is found for any reason to be invalid, the authority which would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence

(3) The punishment awarded by a sentence passed under sub section (1) or sub section (2) shall not be higher in the scale of punishments than or in excess of the punishment awarded by the sentence for which a new sentence is substituted under this section

5 *Amendment of section 116 Act VIII of 1911* —In section 116 of the Indian Army Act 1911 (VIII of 1911) —

(a) for the word and figure ‘section 114’ the words and figures ‘sections 114 and 115’ shall be substituted,

by section
the intro-

- (1) in the proviso for the words 'of the said section' the words and figure of section 114 of the Indian Air Force Act 1932 (XIV of 1932) shall be substituted.
- 6 *Amendment of section 115 Act XII of 1932*—To clause (b) of sub-section (1) of section 115 of the Indian Air Force Act 1932 (XIV of 1932) the following words and figures shall be substituted, namely—
- 'or by the court martial which has found the accused guilty of the offence'.
- 7 *Amendment of section 116 Act XII of 1932*—In sub-section (2) of section 116 of the Indian Air Force Act 1932 (XIV of 1932) the words 'of desertion or shall be omitted'.
- 8 *Substitution of new section for section 118 Act XII of 1932*—For section 118 of the Indian Air Force Act 1932 (XIV of 1932) the following section shall be substituted, namely—
- 108 *Substitution of a valid finding or sentence for an invalid finding or sentence*—(1) Where a finding of guilty by a court martial which has been confirmed or which does not require confirmation is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 110 to commute the punishment awarded by the sentence if the finding had been valid, may substitute a new finding, if the new finding could have been validly made by the court martial on the charge, and if it appears that the court martial must have been satisfied of the facts establishing the offence specified or involved in the new finding and may pass a sentence for the said offence.
- (2) Where a sentence passed by a court martial which has been confirmed or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid the authority which would have had power under section 110 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence.
- (3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than or in excess of the punishment awarded by the sentence for which a new sentence is substituted under this section.
- 9 *Substitution of new section for section 116 Act XII of 1932*—For section 116 of the Indian Air Force Act 1932 (XIV of 1932) the following section shall be substituted, namely—
- '116 *Communication of certain orders to prison officers*—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil military or air force prison a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined'.
- 10 *Amendment of section 128 Act XII of 1932*—In section 128 of the Indian Air Force Act 1932 (XIV of 1932)—
- (a) for the word and figure "section 126" the words and figures "sections 126 and 127" shall be substituted
- (b) in the proviso for the words 'of the said section' the words and figures 'of section 126' shall be substituted

STATEMENT OF OBJECTS AND REASONS

The Army Act (44 and 45 Vict. c. 58) and the Air Force Act were amended by the Army and Air Force (Annual) Act 1942 (5 and 6 Geo. 6 c. 15)—

(a) to extend the power formerly vested only in a court martial of ordering a penal deduction from the pay due to an officer who has lost, damaged or destroyed property occasioned by the commission of an offence to the authority dealing summarily with a charge against that officer of an offence

(b) to abolish the power to convict of the offence of desertion an accused charged before a court martial with attempting to desert and

(c) to provide for the substitution of a valid for an invalid finding of guilty by a court martial

It is considered desirable to amend the Indian Army Act, 1911 and the Indian Air Force Act, 1932, on the same lines. Clauses 2, 3 and 4 of the Bill effect the necessary changes in the Indian Army Act 1911 while clauses 6, 7 and 8 carry out a corresponding amendment of the Indian Air Force Act 1932.

The opportunity afforded by the Bill has been taken to carry out two other small amendments. Section 116 of the Indian Army Act and section 123 of the Indian Air Force Act are amended to remove difficulties experienced by reason of the fact that these sections rendered applicable only one and not both of the preceding sections to the disposal of property of persons becoming insane or being reported missing on active service.

In section 116 of the Indian Air Force Act, a small consequential amendment which was overlooked when Act XIV of 1943 was in passage through the Legislature has now been provided for.

C. M. TRIVEDI

NEW DELHI,

The 10th July 1943

The following Bills were introduced in the Legislative Assembly on the 23rd July 1943 —

I. A Bill No. 28 of 1943

A Bill to provide for the removal of social disabilities among certain classes of Hindus

Preamble—WHEREAS Hindu Shastras admit the existence of four Vernas only and not a fifth one

AND WHEREAS it is being increasingly felt now a days that the existence of a fifth Varna, i.e., the untouchable class, has been causing great social harm to the solidity of the Hindu Society

AND WHEREAS in certain matters even this class viz. the Harijans backward class depressed class are being legally recognised in the adjudication of rights and duties in Civil and Criminal proceedings in public schools of education which has been injuring the Hindu Society as a whole

AND WHEREAS untouchability of man in human society in the second part of the twentieth century is a slur on the society which permits its continuance and scandalous observance

AND WHEREAS such condition in Hindu society is repugnant to modern conditions and ideas of justice and humanity,

AND WHEREAS it should no longer be recognised by law or otherwise enforced but should be totally discouraged

It is hereby enacted as follows —

1 Short Title and Extent—(1) This Act may be called the Removal of Hindu Social Disabilities Act 1943

(2) It extends to the whole of British India

2 Removal of Social Disabilities among certain classes of Hindus—Notwithstanding any law, custom, usage or prescription to the contrary, no subject of His Majesty, resident in British India shall by reason of his belonging to any particular community or class, amongst the Hindus generally known as *chutes* or untouchables, depressed classes, backward classes, from olden times and recently called the Harijans (a name coined by Mahatma Gaudhi and adopted by the Indian National Congress) be disabled or prevented from being admitted into any private or a Government aided or Government educational institution (general or technical or professional) or from being appointed to any public office or from having full and unobstructed or unobjectionable access to the use of any drinking wells, tanks, streams, pathways, lanes or streets, private or public, or to any place of worship to which the Hindu public has access or to any such institution dedicated for public use maintained or paid out of public donations, subscription or contribution or to any place of public meetings or public worship held under any trusteeship or endowment for public welfare

3 *Non-recognition of disabilities by all courts.*—No Court whatsoever, Civil, Revenue or Criminal or Public Authority or local authority shall, while adjudicating any matter or exercising any other or carrying on the affairs entrusted to such authority, recognise any civil or social disabilities imposed by any law, usage, custom or prescription on any such person simply for belonging to such classes as generally known as untouchables, depressed, or backward class and such as Harijans.

4 *Disuse of certain expressions.*—On the coming into force of this Act the words 'backward class', 'depressed class', 'untouchables', 'Harijans', and 'scheduled class' shall cease to exist in any statute book and in common usage.

STATEMENT OF OBJECTS AND REASONS

To have any untouchable in human society in the second quarter of the 20th century is not only a standing scandal to the society which persists in its existence and continuity but is a disgrace to the society. To retain a large number of people human beings in society known as the backward class, the depressed class, the untouchable class, or even by the name, 'Harijan' is condemnable. By one stroke of pen the existence of such a scandal ought to have been removed by Government long ago without caring for the opinion of those who insisted on its continuity. But it is better to be late than never. Mahatma Gandhi, to mitigate the bitterness of the suffering humanity, tried to sugar it by calling the class as Harijans. By this he has established a class which in course of time would have slowly and automatically merged in the 4th Varna in the Sudras but now it has to be removed by law. The Reformers had created a public opinion against such a bad custom and the depressed classes have shown their righteous indignation against such treatment. The objection raised by certain blind orthodox people in Hindu society against my proposal to do away with such social and civic disabilities deserve no notice—as their objections do not stand to reason nor are conducive to the good of the society. It is high time that these disabilities should be done away with. If Hindu society insists on Varnas according to Shastras, they cannot but merge these untouchables in the 4th Varna as they cannot have a fifth Varna recently called the scheduled class. Legislative measures should be taken up to do away with social and civic disabilities of a large number of Hindus who have suffered for ages. Humanity demands it, justice compels it and it is high time that an Act to remove these disabilities should be passed without the least objection and delay.

AMARENDRA NATH CHATTOPADHYAYA

The 12th June, 1945

L. A. BILL No 29 OF 1945

A Bill further to amend the Land Acquisition Act, 1894

WHEREAS It is expedient further to amend the Land Acquisition Act, 1894 (I of 1894), for the purpose hereinafter appearing, It is hereby enacted as follows—

1 *Short title.*—This Act may be called the Land Acquisition (Amendment) Act, 1945.

2 *Amendment of section 3, Act I of 1894.*—In section 3 of the Land Acquisition Act, 1894 (I of 1894) (hereinafter referred to as the said Act),—

(i) the colon at the end of sub section (b) shall be deleted and the following shall be added to the sub section namely—

“or has a right to offer prayer” and

(ii) the following shall be inserted as sub sections (h) and (i) namely
“(h) the expression ‘Place of worship’ means a place or building where prayer is held according to the principles of religion of a class of persons and includes all premises attached to that place or building

(i) ‘Burial place’ means a place where a dead body is buried and includes graveyard, cemetery, maqbara, durgah, takia, Khanqah, cenotaph or samadhi.”

3 Insertion of a new section 56 in Act I of 1891—After section 55 of the said Act the following shall be inserted as section 56 namely —

56 Act not to apply to a place of worship or a burial place—The provisions of this Act shall not apply to a place of worship or a burial place

STATEMENT OF OBJECTS AND REASONS

The provisions of the Land Acquisition Act of 1894 have hardly been applied to places of worship or burial places but owing to their being on the statute sometimes troubles have arisen in some places due to misunderstanding on the part of the government officials. It is therefore desirable that a section should be added in the end of this Act to the effect that its provisions are not intended to be applied to places of worship or burial places as defined in this amending Bill in its application to the province of Delhi and Ajmer Merwara

M. A. GHANI

L. A. BILL No 30 OF 1943

A Bill further to amend the Code of Civil Procedure 1908

WHEREAS it is expedient further to amend the Code of Civil Procedure (V of 1908) for the purpose hereinafter appearing

It is hereby enacted as follows —

1 Short title—This Act may be called the Code of Civil Procedure (Amendment) Act 1943

2 Insertion of a new sub section (3) in section 60 Act I of 1908—To section 60 of the Code of Civil Procedure (V of 1908) add the following as sub-section (3) —

(3) Nothing in clauses (g) (h) (i) (j) (k) (l) (m) and (n) of the proviso to sub section (1) of this section shall be deemed to exempt to more than one half of the amounts contemplated therein in the execution of an order under the Indian Divorce Act (IV of 1869) for alimony or costs or the execution of a decree by the wife or children for maintenance or the execution of a decree for dower debt by the wife against her husband or to the execution of any other decree held by a wife against her husband resulting from the liability of the husband from conjugal relations

STATEMENT OF OBJECTS AND REASONS

Section 60 of the Code of Civil Procedure exempts certain properties of a judgment debtor from attachment and sale in the execution of a decree. It is based on the principle that the judgment debtor should be allowed to have certain essential articles of life and articles necessary for the earning of his livelihood and a minimum amount for his expenses and for the expenses of the family and it is only after making a provision for these that he can be forced to pay to his creditors. This undoubtedly is a sound principle. It is however clear that the exemption so provided gives the judgment debtor an allowance for the maintenance of his wife and children. The exemption in salary and deposits is not solely for the benefit of the judgment debtor but for the benefit of his wife and children as well because for the purposes of the society and the state a provision for the maintenance of the family is no less essential than the maintenance of the judgment debtor himself. It follows therefore that if the judgment debtor fails to maintain his wife and children they are entitled to their share in the exemption. It is no doubt difficult to fix as to what would be their proper share. But looking to the individuals involved it can in my opinion be equitably fixed at one half. If the judgment debtor refuses to maintain his wife and children and discharges his obligations arising out of marital relations he must be prepared to carry on with half of his income and compulsory deposit and pay the other half to his family.

The proposition is almost self-evident. Presently there has been a tendency on the part of the husband to avoid their obligations which they owe to their family and take protection under exemptions which are really intended against outside creditors. To clarify my meaning I may cite a case recently decided by a full bench of the Nagpur High Court reported in 1942 N. I. J. (r. 450) *Dr Nath versus Mrs. Shakuntalabai*. In this case the District Judge of Nagpur passed a decree for a judicial separation with an order directing Dr Nath the husband to pay alimony to Shakuntalabai, the wife, at Rs. 15 per month *pendente lite* and Rs. 25 as permanent alimony. The wife applied for the execution of that decree and prayed for the attachment of her husband's salary which she stated was Rs. 90. The husband contended that the attachment of the salary which was less than Rs. 100 per mensem was barred by section 60 proviso (1). The contention was negatived by the District Judge on the ground that the order for alimony under section 60 of the Divorce Act which is a special law was independent of considerations of section 60 in respect of salary as it is the duty of the husband to support his wife and that to exempt the salary from attachment would be to nullify the order under section 37 of the Indian Divorce Act. The husband appealed to the High Court. The appeal was heard by Mr Justice Neogy, who in view of the importance of the points involved referred it to a bench and the case was ultimately decided by a full bench of three Judges and it was held that the salary could not be attached. Their Lordships however in their judgment took the opportunity of expressing their views on the inequity of this provision of law. They observed:

It is no doubt distressing to moral principle that a woman who has obtained an order for alimony should be unable to execute that order by attaching her husband's salary because her husband happens to be a Government servant and his salary does not exceed the minimum which is laid down for exemption in the Code of Civil Procedure. This minimum has been raised from time to time and considerably raised in recent years, and when the Indian Divorce Act became law in the year 1869, any such exemption if indeed it existed at all was presumably at such a low figure as to render considerations of any possible conflict immaterial. If a person against whom an order for alimony is made has no property the execution would fail and in law it must fail similarly if he has property, that is to say salary, which by the provision of item (1) to the proviso to section 60 of the Code, is protected. The only remedy is by legislation."

This is not a solitary case though few cases of the type go to the High Court. The conduct of the husband in such cases cannot be defended either on grounds of equity justice or morality. It causes great hardship to the deserted wife and children and it is to remove this hardship that this Bill is introduced.

ALLAHABAD

MUHAMMAD AHMAD KAZMI

The 20th June, 1943

L A BILL No 31 of 1943

A Bill to provide for the removal of political disabilities among certain classes of the Indians in general and of the Hindus in particular and for the restoration of certain rights which they are deprived of.

WHEREAS it has been increasingly felt by the Indians in general and by the civil population of India in particular that the disabilities imposed by certain Acts of the Government regarding the licensing of arms to Indians in general and their right to have licences for buying and keeping arms with them even for self protection should no longer be recognised by law

It is hereby enacted as follows—

1 *Short Title and Extent*—(1) This Act may be called the Removal of Political Disabilities Act 194

(2) It extends to the whole of British India

2 *Granting of licence for holding small arms*—(1) Notwithstanding any law custom usage or prescription to the contrary, no subject of His Majesty resident in British India shall by reason merely of his belonging to any particular community class race or nation among the Indians irrespective of caste creed colour or sex be prevented or disabled from holding a licence for all sorts of small arms such as pistols revolvers rifles shot guns or swords or any such weapons as are ordinarily used for hunting or killing dreadful and such a licence and use as it has been given to all Europeans and British people at present residing in India.

(2) A licence for such arms as to an applicant who has attained certificates of character from two his place of birth or his native place shall be granted produces two of residence at

(3) In municipal towns such licences shall be granted by the Chairman or Vice Chairman of the Municipality or the Sub Divisional Officer of the Sub Division or the Magistrate of the District

(4) In rural areas the applicants for such licences shall apply to the President of the Union Board with two certificates by local respectable people of character attached thereto who shall recommend such applicant to hold such licences to the Sub Divisional authority for granting such licence

(5) No such licence shall be granted to (i) habitual criminals (ii) men of deranged brain and (iii) to persons who have not attained majority

3 *Period of licence*—The licence shall remain in force for five years for which a fee of Rs. 10 should be paid annually through the Municipality or the President of the Panchayat or Union Board and the licence shall be respected throughout India and shall be renewed if the licensee has proved himself worthy of keeping the licence

4 *Punishment of non licensees for using small arms*—Anyone using any such arms without being holder of such licences shall be punishable under the Arms Act and anyone using arms for attacking anyone except for self protection or for shooting birds and wild beasts shall be punishable under the Indian Arms Act 1879 (XI of 1878)

5 *Liability to show licence to Government officials when required*—Holders of such licences except in their places of residence shall keep their licences with them and shall show such licences if asked to show whenever and wherever by any Government officials such as Inspector of Police Sub Inspector of Police Head Constable Circle Officer Kanungo Deputy Magistrate Sub Divisional Officer District Magistrate Munsiff Sub Judge or Judge Public Prosecutor and Government Pleaders etc

6 *Right of a licensee to use arms for training his dependants*—All such licensees shall have the right to use arms for training their wife and sons and dependants when they attain maturity for making proper use of their arms when required before they apply for getting licences to the proper authorities

7 *Refusal of licence to untrained people*—Licences shall not be granted to untrained people and a certificate for such training shall be acceptable to the licensing authority only when given by the person who gave such training by an affidavit before a Chairman of Municipality or Sub Divisional Officer District Magistrate or Chairman of the District Board or President of the Union Board or before a Gazetted Officer of the Provincial Government or Member of the Legislative Assembly either Provincial or Central representing the Constituency to which the applicant belongs

STATEMENT OF OBJECTS AND REASONS

Man has the inherent right to protect himself against any aggression from within or from without either by his fellow being or by wild beasts by means of arms (lethal weapons). While human beings all over the world either in Europe or America or in Asia have the privilege of getting a licence for keeping arms Indians who are not in military services under the British Government

have been deprived of their basic human right. Even when India was under British rule they had not been disarmed by any law. This privilege had been enjoyed after the efforts of the Indians to reconquer their motherland from the British power in 1857. Out of fear, suspicion and distrust the British Government had passed the Arms Act by which people of India in general had been deprived of the right to keep arms. For over eighty years this tyranny of law has been in force. This has created a martial and non-martial race in India which has been used as a handle by the British Government for preventing Indians from entering into the military services to defend their motherland. It has been no a deterrent tendency to the Indians and is extremely derogatory to the dignity of the Indian race. The present war has proved to the hilt the mixture of such race as a part of Government as found in Malaya, Burma and Singapore where people were at last helpless when invaded by the Japs. The Indian people have been feeling the same at a time when the Japanese are already in India and when there is a possibility of German invasion. From a human point of view the people of India should be allowed to keep arms for the purpose of self protection and hunting purposes. This Bill instead of repealing the Arms Act, urges restoration of a lost right of the Indian people. This is a political right which no self-respecting nation can tolerate being deprived of. Loyalty to a law, derogatory to sense of national respect, has a limit and it is time now for government to accept this Bill and pass it into an Act which will satisfy the Indians in general and all political parties in particular.

The 12th June 1943

SILAKANTHA DAS

1. A BILL No. 32 of 1943

1 Bill further to amend the Indian Penal Code

WHEREAS it is expedient further to amend the Indian Penal Code (XLV of 1860), for the purpose hereinafter appearing, it is hereby enacted as follows—

1. Short title—This Act may be called the Indian Penal Code (Amendment) Act 1943

2. Amendment of section 34 Act VI of 1860—In section 34 of the Indian Penal Code (XLV of 1860) (hereinafter referred to as the said Code) after the words "in furtherance of the common intention of all" insert the following words—

or such as they know likely to be committed by them

3. Amendment of section 299 Act VI of 1860—In section 299 of the said Code and Illustrations (a) and (b) to that section the following shall be substituted namely—

Culpable homicide—Whoever causes death by voluntarily doing an act with the knowledge that he is likely by such an act to cause death commits the offence of culpable homicide

Illustrations

(a) A assaults and strikes B with a knife in the leg or some other non-vital part of the body. Death results. A has committed the offence of culpable homicide because he knows that he is likely to cause death by striking a person with a knife

(b) A assaults and strikes B with a lathi or other blunt weapon on a non-vital part of the body. Death results. A has not committed culpable homicide because death is not likely to result from such a blow. He has committed an offence of simple or grievous hurt

4. Insertion of a new section 299 A in Act XLV of 1860—After section 299 of the said Code the following section shall be inserted namely—

"299A Punishment for culpable homicide—Whoever commits culpable homicide shall be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both"

5 Amendment of section 300, Act XLV of 1860 —(a) In section 300 of the said Code the words culpable homicide is murder wherever they occur should be substituted by the words 'culpable homicide amounting to murder'

(1) In the *Exceptions* to section 300 of the said Code the words Culpable homicide is not murder wherever they occur should be substituted by the words culpable homicide does not amount to murder

6 Amendment of section 302, Act XLV of 1860 —In section 302 of the said Code for the word 'murder' the words culpable homicide amounting to murder shall be substituted

7 Amendment of section 302 Act XLV of 1860 —In section 302 of the said Code and wherever else the words 'transportation for life' occur in the said Code substitute them with the following words —

imprisonment of either description which may extend to fourteen years

8 Amendment of section 303 Act XLV of 1860 —In section 303 of the said Code for the word 'murder' the words 'culpable homicide amounting to murder' shall be substituted

9 Amendment of section 304 Act XLV of 1860 —In section 304 of the said Code the paragraph beginning with the words 'or with imprisonment of either descriptions' and ending with the words 'injury as is likely to cause death' shall be omitted

10 Amendment of section 307 Act XLV of 1860 —In section 307 of the said Code for the word 'murder' the words 'culpable homicide amounting to murder' shall be substituted

STATEMENT OF OBJECTS AND REASONS

In this Bill I am giving the statement of Objects and Reasons under the various proposed clauses and before entering on that give here in brief a sketch of the same for a proper appreciation of the points involved

The object of this Bill is threefold

Firstly it seeks to amend section 31 I P C and to bring it in conformity with section 149 I P C. Just as the present section stands it applies only to offences of which intention is a necessary ingredient. It cannot be applied to the offence of culpable homicide not amounting to murder as provided in section 304 second part which deals with acts resulting in death but committed without any intention to cause the same. In such cases a difficulty arises if the number of persons taking part in the offence is less than five and the liability of the act fixed on any particular individual as in such cases section 149, I P C cannot apply.

Secondly it is intended to amend the definition of culpable homicide and replace section 299 I P C with a new draft and make the necessary changes in the subsequent sections for removing certain ambiguities which lead to confusion of thought regarding the framing of charges under sections 302 and 304 and which ultimately affect the defence of the accused in trials before the court of Sessions in cases of capital punishment.

Thirdly it seeks to give power to the courts and especially to the High Court in appeal to pass a proper sentence in cases under sections 302/149 in which transportation for life proves to be too harsh a sentence.

Clause 2 —If out of a number of persons combined together one person commits a criminal act the liability of such an act may be fastened on all of such persons under sections 31 and 119 of the Indian Penal Code. The conditions prescribed by these sections for the fastening of the liability are as follows.

Section 31 makes other persons liable if the criminal act is done in furtherance of the common intention of all.

Section 119 extends the liability to other persons if the offence is committed —

(1) in prosecution of the object of that assembly or

(2) such as the members knew to be likely to be committed in prosecution of that object

Thus section 149 only deals with common intention while section 149, deals with common object in the first place and of the knowledge of the likelihood of the commission of the criminal act in the second place. The section 149 is wider than section 34. In cases in which an act is considered to be criminal even in the absence of a particular intention, the liability of the act cannot be extended to other persons under section 34. For example section 31 second part provides a sentence of imprisonment extending to ten years in cases when the death is caused by an act.

If the act is done with the knowledge that it is likely to cause death but without any intention to cause death.

This gives rise to an anomaly. If one person out of five or more persons causes the death of a person without any intention to cause death all the persons would be liable with him under section 34 second part read with section 149 I. P. C. If those persons knew that that act was likely to be committed in the prosecution of the common object. But if the number is less than five no liability would attach to other persons as section 149 would not be applicable to them their number being less than five and under section 34 no liability can be attached to them unless common intention is proved. Thus in such cases unless it can be specifically proved as to who caused the death no person can be convicted under section 304 second part. This loophole was clearly pointed out by the Honourable Mr. Justice Plowden in *Emperor versus Ram Nath and others* 1913 A. L. J. page 207. In this case four persons were found to have caused the death of one Munnu Teli. His Lordship observed "The accused have been found guilty of causing Munnu's death by doing an act with the knowledge that they were likely, by such act, to cause his death." If therefore five or more accused have been convicted they could have been found guilty under sections 304 149 because they knew that death was likely to result from the attack on Munnu, but since there are now only four accused, section 34 is involved and the definition is stricter. There must be furtherance of common intention. Under section 304, second part, however there is no intention of causing death. Section 34 was substituted for the original section in 1873. The second part to section 304 is to be found in the original Act XLV of 1860 but it could not have been part of the original draft. In order to make section 34 applicable to the second part of section 304, it will be necessary to widen it in terms of section 149. Until that is done, accused persons cannot be found guilty under section 304 second part read with section 34. His Lordship had therefore to convict the accused under section 325 I. P. C. The amendment proposed in this clause is intended to remove this defect.

Clauses 36 and clauses 810 —

Section 299 I. P. C. was originally intended to define all offences which resulted in voluntary causing of death. No sentence was attached to it.

The words 'with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death' are reproduced and explained and amplified in section 300 as firstly secondly and thirdly. Fourthly was intended to be equivalent in murder cases to the words 'with the knowledge that he is likely by such act to cause death' in section 299.

But there is a difference between fourthly in Section 300 and the above words in Section 299 whereas there is no difference between the words 'with the intention etc.' in section 299 already quoted and firstly secondly and thirdly in section 300.

There is no difference between murder and culpable homicide not amounting to murder except for the protection afforded to the accused by the *Exceptions* to section 300.

A difficulty then arose was there any offence of culpable homicide and if so what was its punishment? A punishment was attached to it under section

304 second part This meant that section 299 ceased to be a definition of all offences resulting in voluntary causing of death and became the definition of culpable homicide only. Consequently the first part of section 299 "with the intention, etc." became not only redundant but confusing and the *Illustrations* (a) and (b) have turned to be still more confusing because they are clear illustrations of murder, and there is no illustration of 'culpable homicide' as distinguished from murder due to this confusion. It is not properly understood by Sessions Courts that there are three offences of voluntary causing of death (1) Culpable Homicide, (2) Culpable Homicide not amounting to murder and (3) murder. To clarify this position it is suggested that the definition of culpable homicide should be amended as follows —

"Whoever causes death by voluntarily doing an act with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide. To this should be added section 299A: "Whoever commits culpable homicide shall be punished with imprisonment of either description for a term which may extend to 10 years or with fine or with both" i.e., the 2nd part of section 304. The *Illustrations* (a) and (b) to section 299 be deleted as they are illustrations of murder and in its place other illustrations given as are mentioned in the Bill. Changes suggested in other sections are merely consequential. Apart from the importance of clarifying the definitions of these three offences injustice and waste of time arise at present because an accused is entitled to be defended by counsel if he is charged with murder and it is not always easy to obtain experienced counsel when the Sessions Judge amends a charge from culpable homicide or culpable homicide not amounting to murder to a charge of murder and this is frequently done. It is to remove this confusion and consequent difficulties in the trial of cases that this Bill is introduced.

Clause 7 — By this amendment the sentence of Transportation for life is sought to be substituted by imprisonment for 14 years. Under the present conditions transportation for life is out of question and in practice is being substituted by a term of imprisonment for a term of years. This change in conditions itself requires the fixation of the term of rigorous imprisonment that is to be awarded in lieu of the sentence of the transportation for life as 'transportation for life' cannot be interpreted to mean imprisonment for life. The general conception about transportation for life is transportation for a period of twenty years but in practice it mostly amounts to fourteen years, and so I have kept it at that figure. This is one of the reasons for the proposed amendment but the chief reason for the suggested change is that in some cases great hardship is involved to persons found guilty under section 302 due to the presence of the words 'transportation for life'. Many cases of riots occur in which two parties fight with each other resulting in say, death to one member of one of the parties. Say there are ten persons in the opposite party. Under section 302 read with section 149 all the ten are liable at least for transportation for life. This causes sometimes great hardship to the accused and the courts are powerless to intervene. Even the High Court cannot reduce the sentence in appeal as transportation for life is considered to be a sentence different in nature from imprisonment and imprisonment is not provided in section 302. A study of part one of section 304 would make this point still more clear. It provides for transportation for life or imprisonment of either description for a term which may extend to ten years. The court has got no power to award imprisonment of 11 nor 12 years. There is no intermediate stage between transportation for life and imprisonment for ten years. By substituting the imprisonment for a term of years for 'transportation for life' we will give it in the power of the courts and especially the High Court to reduce the sentence to proper limits within their discretion.

L A Bill No. 34 of 1943 *

1943 to provide for the payment of salaries to the Members of the Central Legislature

WHEREAS it is expedient that fix salaries be paid to the Members of the Central Legislature,

It is hereby enacted as follows —

1 *Short title*—This Act may be called the Members of the Central Legislature Payment of Salaries Act 1943.

2 *Payment of salaries to Members of the Central Legislature free of income tax*—The Members of either House of the Central Legislature shall be paid a salary of Rs. 500 (five hundred) a month free of income tax.

Provided that a Member who attends less than half the number of sittings of the Legislature of a particular Session or of a Committee shall not be entitled to the salary for the period of the Session or Committee meetings unless the House concerned condones such absence.

3 *Travelling allowance and facilities to Members*—For the purpose of attending the Sessions of the Legislature or for any other Committee connected with the Legislature or with any Department of the Government of India a Member shall be entitled to one First Class pass by Railway or Steamer, where necessary, with two servants and three maunds of luggage from his permanent residence to the meeting place of the Legislature or the Committee as the case may be, and back. For the portion of the journey for which there is no provision of travel by Railway or Steamer a Member shall be entitled to an allowance of eight annas per mile.

4 *Provision of free furnished residence for Members*—A Member shall be entitled to free furnished residential accommodation at the place of the meeting of the Legislature or the Committee as the case may be.

5 *Exception*—This Act shall not apply to the official members of the Legislature or Committee.

STATEMENT OF OBJECTS AND REASONS

The present method of remunerating the Members of the Legislature by means of daily allowance is very unsatisfactory. A Member's income varies from session to session according to its length. The demand for more frequent and longer sessions on behalf of the non-official Members is given a malicious interpretation in certain quarters. It leads to inequality of the remunerations of the Members *inter se* as a Member who gets into Committees receives more than one who does not. The result is that the membership of a Committee instead of being an opportunity for service is regarded as a prize and it is not always the case that those best fitted get into Committees. Payment by a fixed salary has been resorted to practically in all the Provinces in India under the new Act and it is desirable that that system should be adopted in the Centre as well.

6th April 1943

NILAKANTHA DAS

L A Bill No. 34 of 1943

A Bill further to amend the Indian Penal Code

WHEREAS it is necessary and expedient that the proceedings and speeches in Indian Legislatures should be published in the widest possible manner. It is hereby enacted as follows —

1 *Short title and extent*—(1) This Act may be called the Indian Penal Code (Amendment) Act 1943.

(2) It shall extend to the whole of British India.

* The Governor General has been pleased to accord the previous sanction required under Section 67(2)(a) of the Government of India Act as passed from repeal by Part IV of the Government of India (Commencement and Transitory Provisions) Order 1946 to the introduction in the Legislative Assembly of this Bill.

2 Insertion of new section 93A in the Indian Press (1860) of the Indian Press

93A Publ
good faith, of any

—No publication
in any Indian Legislature is an offence

STATEMENT OF OBJECTS AND REASONS

It is proper and necessary that for the due and effective exercise and of the functions and duties of the Indian Legislatures and of the members and for the promotion of wise and good work in the Legislatures no obstruction should exist in the way of the publication not only in official but in the newspapers and journals of the country of the speeches votes and proceedings of the Indian Legislatures. The recent ruling of the President of the Legislative Assembly given on the point of privilege raised by Sardar Sant Singh in connection with the publication of his speech by Mr Krishna Kant Malviya in the *Abyudhaya* has brought the whole question to the front. The position is exceedingly dangerous for the Legislature for the people and for the Parliament. It is impossible to expect the new papers to exercise the widest possible publicity of the speeches of the members of the Legislatures before publishing them. Moreover the electors would like to know how their representatives speak in the Legislature to which they have given the vote in the Legislature. It is not right that the sword of Damocles should hang over them. In the Irish Free State such a privilege is conferred by Statute. It has been enacted in England by the Bill of Rights that the freedom of speech in proceedings in Parliament ought not to be impeached.

There is no danger of abuse of this power of publication of the speeches in the Assembly because Standing Order 29 of the Legislative Assembly provides that a member while speaking shall not utter treasonable seditious or defamatory words. Without this right the freedom of speech of the members in the Indian Legislature may be reduced to almost nothing and this Bill is perfectly consistent with the provisions of the Government of India Act which under section 67 (7) provides that no person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber or by reason of anything contained in any official report of the proceedings of either chamber. These official reports are available to all citizen at reasonable prices. Publication of the proceedings in other newspapers cannot create any different situation. Hence this Bill.

MOHD AHMAD KAZMI

MD RAFT Secy

3 Amendment of section 370, Act XXIX of 1925—In the proviso to section (1) of section 370 of the said Act after the word "administration" words or probate' shall be inserted

STATEMENT OF OBJECTS AND REASONS

Prior to 1901, Indian Christians laboured under a serious grievance, namely that they were compelled to obtain probate of wills and letters of administration with liability to pay death duties on the death of every owner of property under the Indian Succession Act of 1865 while Hindus and Muslims were exempt from the provisions of the Act. They have since been partially relieved by being placed practically on the same footing as their non-Christian countrymen in cases of intestacy under the Indian Christian Estates Administration Act of 1901 but where the deceased has left a will they are still bound to obtain probate and pay probate duty as required by section 213 of the Indian Succession Act XXXIX of 1925 a section which does not apply to wills of Hindus, Buddhists, Sikhs or Jains except where such wills are of the class specified in clauses (a) and (b) of section 57 and to all wills of Muhammadans.

The necessity of making wills has been imposed upon Indian Christians by the provisions of the Indian Succession Act as to intestate succession and made applicable to them which are far in advance of their usages and are drawn from English law. It is felt as a serious hardship that in such circumstances Indian Christians should be compelled to obtain probate and should be liable to pay death duties while their non-Christian countrymen to whom such a luxury is exempt. From this injustice they should be relieved by placing Indian Christians on the same footing as Hindus and Muhammadans in sections 213 and 370 of the Act.

MILAPORE MADRAS.

DAVID DEVADOSS

G. H. SPENCE, S.

AND RAKI S.

The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, NOVEMBER 13, 1943

being in given to the Part in order that it may be filed as a separate compilation.

PART V

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Joint Committee on the Bill to amend and codify the Hindu Law relating to intestate succession, was presented to the Legislative Assembly on the 8th November, 1943 —

We, the undersigned, members of the Joint Committee to which the Bill to amend and codify the Hindu Law relating to intestate succession was referred, have considered the Bill and the papers noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto

We desire to acknowledge with gratitude and appreciation the very valuable assistance given to us by Mr V V Joshi a member of the Hindu Law Committee to whose labours the Bill owes its existence who attended throughout our deliberations to place his scholarship at our disposal by Messrs V V. Deshpande and Rama Prasad Mukherjee Sir B L Mitter Advocate General of India, and a deputation representing the women of Simla who presented themselves before the Committee to voice certain representative views and by those associations or individuals from whom we have received expressions of their views though they have not been able to accept our invitation to attend in person to expound them Memoranda supplied to us by the representatives of the Hindu women in Simla by the Maharashtra Branch of the All India Women's Conference by the Bhatia Stri Mandal Bombay by Mr Atul Chandra Gupta Advocate Calcutta High Court and by Mr Rama Prasad Mukherjee as a supplement to his oral evidence are appended to this our Report

Before referring to the changes made by us in the text of the Bill which will be found briefly explained in our remarks on the individual clauses affected we desire to make some general observations on two basic themes affecting the Bill on which we heard expositions from the witnesses examined by us namely the alleged incapacity of women as a class to inherit and the impropriety of granting to women an absolute estate

There is a body of opinion which still maintains that women as a class should be excluded from inheritance and should not be given absolute ownership over property they acquire either by inheritance or partition In support of this opinion are urged (1) certain Vedic texts (2) the general incompetence of women (3) the evil of fragmentation of holdings and (4) the fear of the property being lost to the family It is necessary to examine some of these arguments

It must be premised, and all the scholars agree that much of the vast Vedic literature has been lost—little remains in it of positive law The *Sutras* and *Smritikas* who were well versed in all the branches of the Vedas extant in their time when they were available in greater volume and exactitude, based

their Sutras and Smritis on the law as they found it in the Vedas. In spite of this state of affairs, it has been seriously urged that the Vedic text, lay down a rule of total exclusion of women from inheritance and from full dominion over property and that the rule ought to be revived. Of the various texts relied upon, the foremost is the well known Nirindriya text in Taittiriya Samhita (VI—5 8-2) which occurs in the ritual of the Soma sacrifice and which reads thus 'Soma could not stand being drawn for women, making ghee the bolt (they) struck it, they took it when it became destitute of vigour (indriya), therefore women being destitute of strength take no portion and speak more weakly than even the fallen man'. Boudhayanu relies upon this incident and this passage (II—2 3-16) for inferring the rule that according to the Vedas, women are weak and therefore incompetent to inherit. This text has been critically examined by many eminent scholars including Professor Max Muller, Dr Jolly (Hindu Law, p 192), West (Hindu Law, pp 117-118) Dr Sarvadhanika (Law of Inheritance, p 208) and Dr D N Mitra (Position of Women in Hindu Law pp 601-602). All hold that the original passage only referred to the ritual of the Soma sacrifice and the exclusion of women from participation in the Soma juice, and had no bearing on their exclusion from inheritance. It is worthy of note that Mitakshara and Mayukha take no notice of this text and it is legitimate to conclude that they did not consider the text as having any bearing on the question of inheritance. Reliance is placed upon other passages also which have not even been referred to by any law giver. A passage from Satipatha Brahmana (IV—4 2 13) cited reads thus 'He then mixes it with the residue of the ghee left in the spoon now other libations he completes by mixing but this one he diminishes, for ghee is thunderbolt and by that thunderbolt the Gods smote the wives and unmanned them, and thus smitten and unmanned they neither owned self nor did they own any heritage'. Another passage relied upon from Taittiriya Samhita (VI—5 8) reads thus

Soma could not bear being drawn for women making the ghee a bolt they beat it, they drew it when it had lost its power therefore women are powerless have no inheritance and speak more weakly than even a bid man. These two passages evidently refer to the same incident in the Soma sacrifice and at most may be taken to have laid down a rule of exclusion from participation in the Soma juice they hardly support the theory of exclusion from inheritance. Another passage relied upon from Vaitrayani Samhita (IV—6 3) reads thus

'As Shikhi is given to others and not the wooden vessel, therefore the woman is given to others and not the male. Lastly, reliance is also placed upon a

passage from Nirukta (III—1) which reads thus 'As between the two son and daughter, one is possessed of male sex, who performs meritorious acts such as offering of pinda, the other possessed of female sex is only adorned with costly clothes and ornaments a son being authorised to perform meritorious acts, is entitled to inherit the property of his parents and a daughter is not so, therefore she is only given to others. These three passages have not been

referred to, much less relied upon, even by subsequent writers who favoured the theory of exclusion of women from inheritance, and it is legitimate to infer that these passages were never taken as having any bearing on the question of inheritance. The Sutrikas like Apastamba (II—14 16 20), and Smritikars like Vishnu (XVIII—31 3), Manu (IX—186), Yajñavalkya (II—115 123), Narada (XV—12) Brihaspati (as cited in commentaries), Katyayana, and Vasva recognised the right of women to hold property and the right to receive a share on partition or succession from the property of their husbands. Jaunmi's aphorisms that (1) women are possessed of wealth (VI—14), as certain Vedic texts show that women have the capacity of owning and possessing wealth (VI—16) and (2) by virtue of Vedic texts, husband and wife, both being capable of possessing wealth, should perform the sacrifice jointly (VI—17) place beyond doubt the capacity of women to hold and acquire property. The three passages relied upon for supporting the theory of exclusion were not even considered by the Smritikars and commentators, either because they had little or no bearing on the question or because the position otherwise was fully supported by Vedic texts which they had before them.

After evidence to which it is unnecessary to allude here also points to the fusion that Vedic literature did not support the theory of total exclusion of women from property rights.

The question of absolute estate is ably discussed by the Hindu Law Committee in its fourth memorandum and in the explanatory note attached to original Bill. Those discussions we need not repeat, but we would briefly refer to the position in the Dayabhaga School.

The founder of the Dayabhaga School was chiefly responsible for advocating theory of limited ownership. In support of his theory Jimutavahana relied on two solitary slokas of Katyayan which admittedly referred to the property of a woman by her husband. The whole of the Katyayan text is not reliable and in the absence of positive statement it is improper to infer that Jayana wanted to place the same restrictions on property inherited by the man. The word 'daya' in the couplet of Katyayana is expressive of two things, viz., gift or heritage, and Vivad Chintamani argues that what applied to gift must be deemed to be applicable to inheritance as well. Otherwise query "If so for the property gifted, what about the property inherited?" would remain unsatisfied. This topic is elaborately dealt with by the late Mr. Kapil Chandra Bhattacharya, a jurist and scholar of outstanding ability and standing. He has pointed out how the texts were misread and how the wrong conclusions were drawn by Courts of law. In the Mitakshara this theory of limited ownership had no place at all. All property however acquired by the man became her *stridhana*, and such *stridhana* devolved not upon the heirs of the last male holder, but upon her own heirs, such was the scheme of inheritance. If it is urged that people have for long, unthinkingly accepted the law laid down by the Courts and that therefore it should be taken and retained as good law, we reply with the observation of Mr. Justice West (in the case *Bhagirthibai v. Kankhuria* (11 Bombay 28)) "If it could be shown that the customary law, in this instance rested on a palpable error or a demonstrable misreading of the text of the accepted authority then no doubt, it might be said that the popular consciousness which had accepted its conviction of the law from a corrupt text, would much more accede to the corrected text."

We have made no change in the preamble which expresses the intention of *codifying and codifying* in successive stages the whole of the Hindu Law now in force in British India. We appreciate the difficulty of dealing with one particular topic of that law without having before us a complete picture of all the proposed reforms. It would have materially simplified our task if we had had drafts of the proposals affecting other topics some of which for instance the law of maintenance, the law of legitimacy and marriage the law of partition the reunion the law of adoption, are not without their reactions on the law of estate succession and might be capable of influencing decisions on some of the points we have had to consider in this Bill. But we have not found it practicable to proceed with this, the first stage in the work of codification. Particularly as the Bill is expressed to come into operation only in 1916 by which date we hope Governors Provinces may have passed the necessary supplementary legislation to make the principles of this Bill applicable to uncultivated land and much further progress may have been made in dealing with further topics of the Hindu Law. We think that steps should be taken to resuscitate the Hindu Law Committee and to encourage the formulation and settlement of the remaining Parts of the projected Code in the interval which is to elapse before the present Bill when passed comes into force. It may well be found that the present Bill will require before it is allowed to come into operation readjustment and amendment in the light of decisions taken in connection with other branches of the Hindu Law.

Clause 1—The new sub clause inserted as sub clause (3) to define the meaning of the Act provides in a more direct and satisfactory manner the definition produced in the Bill as drafted by the definition of "Hindu" previously found in clause 2(e) and the first proviso appended to clause 3 which we

have omitted. We thereby avoid giving an artificially extended sense to the word Hindu while securing as the Bill intended that its provisions should apply to those non-Hindus who are governed in matters of succession by the Hindu Law. Where the word Hindu was used in the Bill in clauses 2(3)(b) and 3 we have substituted the expression person to whom this Act applies. In transferring to this new position the first proviso to clause 3 as drafted we have inserted in sub clause (a) the words except in Chief Commissioners Provinces. This correctly states the constitutional position. A Central Act such as this will be cannot affect the devolution of agricultural land in Governors Provinces but is competent to do so in the centrally administered areas. We have considered it proper to indicate that the Bill is intended to have this effect in Chief Commissioners Provinces.

Clause 2 sub clause (1) clause (d)—The words 'whether he dies leaving male issue or not' have been inserted because without them there would be room for doubt whether the case of an intestate in Mitakshara jurisdiction who dies leaving such issue is included. The text of Yajnavalkya which is the basis of the law of inheritance in Mitakshara jurisdictions states that inheritance is confined to the estate of one who leaves no male issue when a man dies leaving a son grandson or great grandson the heritage is unobstructed and they take in all cases by survivorship whether the property is ancestral or the separate property of the father.

We wish to call attention to the fact that by this definition of "heritable property" property of the nature of absolute debt is excluded.

In the *Illustration* separate property has been substituted for self acquired property. Self acquired property thrown into the common stock becomes joint property. A reference has also been inserted to property in the hands of the last surviving coparcener as being another category of property which under the law as it stands passes by inheritance and not by survivorship.

The omission of the definition of Hindu contained in clause (c) of the Bill as introduced has been explained in our remarks on clause 1(3).

The omission of the word the in clause (f) is merely a drafting refinement.

In the definition of *stridhana* we have inserted the words by way of absolute gift following the wording used in the Madras case 21 Madras 100 when setting out the comprehensive definition of *stridhana* given in the *Mitakshara* as quoted in Mulla's Hindu Law Ninth Edition page 113 and we have added the reference to arrears of maintenance merely *ex majori cautela*.

Sub clause (2)—The provision that stood as clause (b) of this sub clause has been transferred to and incorporated in clause 8 of the Bill as sub clause (4) in order that it may not by virtue of the generality given to its application by its position in clause 2 impinge upon the provisions of clause 5 to which clause it was not intended to have application.

Clause 3—Both the alterations made in this clause has been explained in our remarks upon clause 1.

Clause 5—Important changes have been made by us in that portion of this clause which deals with the simultaneous heirs and our decisions were only arrived at after prolonged consideration of several matters of considerable difficulty and controversy. The Bill had already included among the simultaneous heirs the daughter whether married unmarried or widow. We have had addressed to us the argument that the allocation of a share to the daughter is in substitution for the moral or legal obligation to maintain her and to provide for her education and satisfactory marriage which rests upon the father, and on his heirs that in the case of a married daughter this obligation has already been discharged by the father and that these considerations justify a differentiation between the unmarried and the married daughter the latter's interests being

efficiently safeguarded by the fact that the father's natural affection would prompt him to provide for the indigent married daughter. Those holding this view would not admit that the daughter has any right to a share otherwise than in fee of her right to maintenance. We have not acceded to this view and we have retained unchanged the provisions of the Bill allotting a share in the estate to both the married and the unmarried daughter. We have also accepted the Bill's proposal that this share should be half that received by a son, though we considered various proposals to accord her a smaller share or to differentiate between the share taken by a married and an unmarried daughter. Influenced by the consideration that the daughter's inclusion among the simultaneous heirs was based on the fact that she already possessed this right to maintenance, we are considered it equitable that aged parents who similarly have a right to maintenance should receive a share among the simultaneous heirs. We have accordingly included the father and mother when they are dependent upon the estate fixing the share of a parent as will be seen from sub-clause (c) of clause 7, as one eighth that of the son but we have added a provision that any property so taken shall on the death intestate of the parent go back into the estate and pass to the heirs of the son as it would have passed had it not temporarily been diverted to the parents though we consider the parent as acquiring an absolute estate in the property with full power of disposal over it.

We have also included the widowed daughter in law whom the Bill excluded from among the simultaneous heirs. The Desamulh Act of 1837 had given her a right to a share equal to that of a son or where there was a son or son's son surviving equal to that of her son thereby in some circumstances adversely affecting the daughter's interests. At one time the Hindu Law Committee had contemplated including her but in consideration of the fact that she is provided for as the daughter in her father's family and takes a share of her husband's property as his widow the Hindu Law Committee thought it unnecessary to provide for her again in her father-in-law's family. The opinion was expressed to us that instead of providing her with a share her case should be left to be dealt with by the law of maintenance which could propose maintenance on a generous scale for her. We have preferred to regard her as entitled to a share for the very reason that she has this right to maintenance and we have accordingly included her among the simultaneous heirs and have given her, when she is without a son or grandson, half the share that would have come to her husband if living when she has a son or grandson living we have provided that her share should be reduced to one fourth what her husband would have received if living leaving three fourths for the son or grandson.

When considering the case of the widowed daughter in law it appeared to us at first sight to be reasonable that the rights given to the widowed daughter in law should equally be given to the grand daughter in law and the great grand daughter in law and we tentatively included these also among the simultaneous heirs. When however we addressed ourselves to determining the shares they were to receive and how these shares were to be provided for we found ourselves confronted with almost insuperable difficulties. Any arrangement we could devise appeared likely to be unjust to the great grandson where his own mother and grand mother, the daughter in law of the intestate were both alive. We were forced to the conclusion that it would be impracticable to include the grand daughter in law and great grand daughter in law for whose inclusion also the argument justifying the inclusion of the grand daughter that she had a right to be maintained was absent.

To the heirs included in Class II we have added after the sister and sister's son the brother's daughter and sister's daughter in that order. The framers of the Bill recognised that there was some ground for including them and recommended that if included they should be placed where we have placed them.

Clause 7—Two sub-clauses have been added specifying the shares of a parent and of a widowed daughter in law in accordance with the decision.

referred to in our remarks on clause 5. In connection with this provision no made for the daughter in law we are of opinion that the male heir should be given a legal option to purchase from the female heir, on her deciding to dispose of it, any immovable property inherited by her along with the male heir. We have not, however, included in the Bill any provision to this effect, on the view that such a provision could not properly find a place in a Bill exclusively concerned with intestate succession.

Clause 8—Our reasons for the inclusion as sub clause (4) of this clause of the provision originally appearing as clause (b) of clause 2(2) of the Bill have already been referred to in our remarks under clause 2. We have slightly altered the wording of the provision so as to make it produce the same effect without appearing to affect the status of the woman as an agnate in respect of her father and husband's families.

Clause 13—The alteration made in clause (a) of this clause is intended to secure that *stridhana* consisting of property inherited from a husband or from his father, grandfather or great grandfather shall pass to the heirs of the husband and goes some way to meet fears that family property may by becoming *stridhana* pass out of the family.

In clause (b) we have altered the rules for the devolution of *stridhana* and other kinds so as to secure that a son and daughter shall take simultaneously and that similarly a daughter's son and daughter and a son's son and daughter shall take simultaneously.

In consequence of this decision we have had to decide the shares receivable by them and have by our addition to sub clause (c) given to the son, the daughter's son and the son's son half the share taken by his sister.

We have postponed the husband's heirs to a position below the mother and father and following the order in which the mother and father inherit, we have placed the mother's heirs in front of the father's heirs.

Clause 14—The change here made is necessitated by the alteration made by us in clauses (1), (2) and (3) of sub clause (b) of clause 13, but does not alter the principle embodied in the clause, namely, that heirs in the second and succeeding generations shall take *per stirpes* and not *per capita*.

Clause 17—We have made no changes in this clause, though it presents some difficulties to us. The framers of the Bill intended the clause to establish that where there is a marriage valid by Hindu Law though contracted outside the caste there should in future be no doubt that rights of succession enjoyed by the widow and the issue were the same as in a valid marriage contracted inside the caste. We have been handicapped by not having before us the proposals relating to the law of marriage, and some of us have felt doubts about the effect of the clause in cases where a marriage is contracted by a Hindu with a person not only outside his caste but outside the Hindu community.

Clause 18—We have omitted the first clause of the proviso which allowed a widow's right to inherit to her husband to be questioned after his death if the husband had made a will which is subsisting at the time of the death depriving her of any portion of his property on the ground of unchastity. The framers of the Bill were concerned to combat the practice of unscrupulous reversioners blackballing widows. We have been impressed by instances quoted to us where widows have suffered grave injustice through unfounded allegations of unchastity made against them in testamentary dispositions left by their husbands. We think that the only case in which it should be possible to attack the widow's right to succeed is that which we have retained in the proviso, namely the existence of a finding by a Court of Law in a case to which her husband was a party in which the fact of unchastity was specifically in issue.

In connection with clause 20, we considered whether the abandonment of the Hindu religion and conversion to another religion should be made a ground of disqualification from inheritance. We decided against upsetting the position established by the Caste Disabilities Removal Act, 1850.

² The Bill was published in the Gazette of India dated the 20th May, 1912.

SULTAN ABUCCO

*H N KUNZRU

* S. V. MAITHIA

*RITVUKA RAY

*GHULAM BHIK NAIRANG

*HOSSAIN, IMAM

• N SAPRU

• LA P PATRO

*G. V. DISIMONE

S. A. LAL

*SUSIL KUMAR ROY CHOWDHURY

*1 1 KALIKAR

*BALNATH BAJORIA

*AC DATA

*NIJAKÁNTHA DAS

*LALCHAND NAVALRAI

*SOBHAN SINGH

*MARENDRA NATH CHATTOPADHAYAYA

NEW DELHI

The 6th November 1943

* Subject to a minute or minutes of Dissent
† Minute not received

APPENDIX

1

Memorandum dated 8th May 1913 submitted to the Joint Committee
by Mr Atul Chandra Gupta Advocate Calcutta High Court

The Hindu Intestate Succession Bill drawn up by the Law Committee and now before the Central Indian Legislature has met that one important spell from which its most important feature is the removal of the distinction between the Hindu and the non-Hindu law of inheritance.

Its most important aspect is the attempt to lay down a law of inheritance for all Hindus of British India. Any person or body of persons who mixes this aspect of the Bill and concentrates on some other aspect of it misses the important character of the Bill from which it is primarily to be judged. Any one who speaks of Hindu Unity or of the Hindu Sangathan without realising the force of the Unity or Law of Inheritance is being against this unity merely utters slogans without meaning anything practical. Any opposition to introducing one uniform law of inheritance for all Hindus is a relictable, except by a mental inertia opposing all changes when we remember that by the acceptance of the Mitakshara system practical uniformity of the law of inheritance was established in Hindu India centuries ago with the exception of Bengal and Assam. Even the author of the Mitakshara was not a Hindu of hoary antiquity but a secular writer of comparatively modern historical times. The idea that there is something religious in the law of inheritance so that to change it would be to hit something religious flourishes only on ignorance. The Mitakshara distinctly says that the Smriti texts relating to inheritance are mostly based on usage of people. *Iti en ashman prakara chula jataharani jatanani jmutavahana* the author of the *Dayabhaga* who deduces his scheme of inheritance not by the test of nearness of blood but on the theory of efficacy of *Pinda* in the *Parvana* *Stadh* ceremony did not think that law of inheritance was therefore something religious. He was using the *Parvana* *Stadh* *Pinda* merely as a theory for deducing the scheme of inheritance which according to him ought to be accepted. He definitely says that if the learned are not satisfied with his reasoning based on the *Pinda* theory they require that the scheme should follow from the words of the texts. *Iti a heme dhaa* *Iti tharapanto ho bidusham bahaniak ebajomarthi tathapi yathokta eba lachayoye varitlograhyo kim bishatrena*. In performing the task of providing one law for all Hindus

referred to in our remarks on clause 5. In connection with this provision no made for the daughter in law we are of opinion that the male heir should be given a legal option to purchase from the female heir, on her deciding to dispose of it, any immovable property inherited by her along with the male heir. We have not, however, included in the Bill any provision to this effect, on the view that such a provision could not properly find a place in a Bill exclusively concerned with intestate succession.

Clause 8—Our reasons for the inclusion as sub clause (4) of this clause of the provision originally appearing as clause (b) of clause 2(2) of the Bill have already been referred to in our remarks under clause 2. We have slightly altered the wording of the provision so as to make it produce the same effect without appearing to affect the status of the woman as an agnate in respect of her father and husband's families.

Clause 13—The alteration made in clause (a) of this clause is intended to secure that *stridhana* consisting of property inherited from a husband or from the heirs of the husband becoming *stridhana*.

In clause (b) we have altered the rules for the devolution of *stridhana* and other kinds so as to secure that a son and daughter shall take simultaneously and that similarly a daughter's son and daughter and a son's son and daughter shall take simultaneously.

In consequence of this decision we have had to decide the shares receivable by them and have by our addition to sub clause (c) given to the son the daughter's son and the son's son half the share taken by his sister.

We have postponed the husband's heirs to a position below the mother and father, and, following the order in which the mother and father inherit, we have placed the mother's heirs in front of the father's heirs.

Clause 14—The change here made is necessitated by the alteration made by us in entries (1), (2) and (3) of sub clause (b) of clause 13, but does not alter the principle embodied in the clause, namely, that heirs in the second and succeeding generations shall take *per stirpes* and not *per capita*.

Clause 17—We have made no changes in this clause, though it presented some difficulties to us. The framers of the Bill intended the clause to establish that where there is a marriage valid by Hindu Law though contracted outside the caste, there should in future be no doubt that rights of succession enjoyed by the widow and the issue were the same as in a valid marriage contracted inside the caste. We have been handicapped by not having before us the proposals relating to the law of marriage, and some of us have felt doubts about the effect of the clause in cases where a marriage is contracted by a Hindu with a person not only outside his caste but outside the Hindu community.

Clause 18—We have omitted the first clause of the proviso which allowed a widow's right to inherit to her husband to be questioned after his death if the husband had made a will which is subsisting at the time of the death depriving her of any portion of his property on the ground of unchastity. The framers of the Bill were concerned to combat the practice of unscrupulous reversioners of blackmailing widows. We have been impressed by instances quoted to us in which widows have suffered grave injustice through unfounded allegations of unchastity made against them in testamentary dispositions left by their husbands. We think that the only case in which it should be possible to attack the widow's right to succeed is that which we have retained in the proviso, namely, the existence of a finding by a Court of Law in a case to which her husband was a party and in which the fact of unchastity was specifically in issue.

In connection with clause 20 we considered whether the abandonment of the Hindu religion and conversion to another religion should be made a ground of disqualification from inheritance. We decided against upsetting the position established by the Caste Disabilities Removal Act, 1850.

2 The Bill was published in the *Gazette of India*, dated the 30th May, 1942
 3 We are of opinion that the Bill has been so altered as to require republication and we recommend that this be done.

S SULTAN AHMED

*H N KUNZRU.

*S N MANTHA

*RENUKA RAY

*GHULAM BHIK NAIRANG

*HOSSAIN IMAM

*P. N. SAPRU

*IA P. PATRO

*G V DESHMUKH

S A LAL

*SUSIL KUMAR ROY CHOWDHURY.

*V V KALIKAR

*BAIJNATH BAJORIA

*A C DATTA.

*NILAKANTHA DAS

*LALCHAND NAVALRAI

*SOBHA SINGH

*AMARENDRA NATH CHATTOPADHAYAYA

NEW DELHI,

the 8th November, 1943

* Subject to a minute or minutes of Dissent
 † Minute not received

APPENDIX

I

Memorandum, dated 8th May, 1943, submitted to the Joint Committee by Mr Atul Chandra Gupta, Advocate, Calcutta High Court

The Hindu Intestate Succession Bill, drawn up by the Joint Committee and now before the Central Indian Legislature, has more than one important aspect from which to judge it either for supporting or for opposing.

Its most important aspect is the attempt to lay down one law of inheritance for all Hindus of British India. Any person or body of persons who misses this aspect of the Bill and concentrates on some other aspect of it misses the important character of the Bill from which it is primarily to be judged. Any one who speaks of Hindu Unity or Hindu 'Sangathan' without realising the force of the Unity of Law of inheritance in arguing about this unity merely utters slogans without meaning anything practical. Any proposition to introducing one uniform law of inheritance for all Hindus is inexplicable, except by a mental inertia opposing all changes, when we remember that by the acceptance of the Mitakshara system practical uniformity of the law of inheritance was established in Hindu India centuries ago with the exception of Bengal And Assam and Orissa, the author of the Mitakshara was not a Rishi of hoary antiquity but a secular writer of comparatively modern historical times. The idea that there is something religious in a law of inheritance so that to change it would be to hit something religious flourishes only on ignorance. The Mitakshara distinctly says that the Smṛiti texts relating to inheritance are mostly based on usage of people (*Prajān āshmin prakaraṇe*) *śūla* *yubhakarāṇi* *chānanī* *Jimutavahana*, the author of the Dayabhaga who deduces his scheme of inheritance not by the test of nearness of blood but on the theory of efficacy of Pinda in the Parvana Śrādh ceremony, did not think that law of inheritance was therefore something religious. He was using the Parvana Śrādh Pinda merely as a theory for deducing a scheme of inheritance which according to him ought to be accepted. He definitely says that if the learned are not satisfied with his reasoning based on the Pinda theory, he requires that the scheme should follow from the words of the texts his scheme does (*Itihāsoṃśitoḥ śiḍuḥam bāchanik chajamarṣaṇa lathapī yathokta eba bāchanayogīlograhya kim bishareṇa*). In performing the task of providing one law for all Hindus

the Bill generally accepts the Dayabhaga law of inheritance for near succession, and the Mitakshara law for distant succession. The ability with which the Rau Committee has performed this task is a marvel of acute and accurate analysis both of the principles of the Dayabhaga and the Mitakshara as well as of the case law which has developed in course of administration of justice. This scheme of one uniform law of succession for all Hindus, may be with some modifications, should be supported by all Hindus, who desire with sincerity unity of Hindu India. Women's organisation throughout India should give explicit support to this aspect of the Bill, without confining themselves only to those parts of the Bill where new rights are given to women. For after all national welfare as a whole ought to be the concern of women as well as of men if real equality of the sexes is the ideal.

The other important aspect of the Bill is the attempt to remove disqualifications of women in the matter of inheritance merely because they are women. The warm support which this feature of the Bill has received from all women organisations in India at once shows the hollowness of the contention, advanced by some people that Hindu women are quite satisfied with the law as it is so nappy in their lot in Hindu society by the operation of natural love and reverence in spite of legal disability. There are no reasons for these disqualifications at the present time whatever might be the historical origin of these disqualifications. The argument that fragmentation of property would be the result of introducing more female heirs and therefore economically detrimental to the society is unfounded if sincere. On the whole no economic change worth noticing would follow and a meaningless injustice including psychological sense of injustice would be removed. In Bengal for instance the majority of agriculturists are Mussalmans amongst whom the daughters inherit along with sons. Is the condition of Mussalman agriculturists of Bengal economically worse than that of the Hindu agriculturists? Again what is really behind the opposition is the mental inertia which opposes all changes. The Hindu Law of Inheritance (Amendment) Act 1929 introducing some females as heirs who were not so before has been passed for some years now for Hindus governed by the Mitakshara law and the Hindu Women's Right to Property Act was passed in 1937 and amended in 1938 making the widow and the widow of a predeceased son heirs along with the son. Is no evil economic effect on Hindu society apparent? No wonderless fear should stand in the way of the aspect of the Bill being passed into law. Hindu men should unhesitatingly concede the proposed rights to Hindu women showing by deed what they profess in words as their great reverence for the mothers of the community.

II

Memorandum submitted to the Joint Committee by the representatives of the women of Simla

We, the undersigned on behalf of Hindu women in Simla submit the following points for the consideration of the Joint Select Committee. While strongly supporting the main principles embodied in the intestate succession Bill to heritable property namely (1) an uniform law for all Hindus in British India, (2) the removal of the sex disqualification and (3) the abolition of the limited estate for women we should like to submit the following points for the consideration of the Select Committee. We hope that the Committee will accept our suggestions and amend the Bill accordingly.

Our suggestions are detailed below—

1 We feel that though this Bill seeks to remove sex disqualification it does not do so fully as there is a great inequality between the share of the son and daughter. We suggest that—

(a) A daughter should not only be a simultaneous heir but should share equally with the son in the father's property.

(b) If son's son and son's son's son are included as simultaneous heirs then the daughter's son the daughter's daughter and the son's daughter should also be simultaneous heirs—otherwise they should all come in together after the simultaneous heirs. We are aware of the arguments against this procedure but we feel that these can be met provided an unprejudiced view is taken. We detail below the arguments against an equal distribution and the answers to these objections—

Objection—(i) The married daughter is not a govt. of her father and disintegration of property will result by giving her a share.

Answer—(a) The daughter is as much the object of parental affection and considering all points of view it is better that a woman should inherit as a daughter than as a daughter in law as then she is less likely to be disinherited by a will. We have no objection if the widowed daughter in law too is included to the share of the predeceased son, but this should not prejudice the daughter's share. We are quite willing that the widowed daughter in law be given maintenance rights rather than inheritance rights in her father in law's property—she will come in as a daughter elsewhere.

(b) The ancient shastras do not exclude a daughter from inheritance. Bṛhaspati Smṛiti says that if a man divides his property during his lifetime, the daughter should be given half a share. If a share is mentioned by Yajñavalkya, Kalyana and Manu and they are quite clear if it is 1/4 share from each son or only of all the sons. As the question of

there is no undecided in British authority, we feel that in view of the considerations of equality and of modern requirements an equal share should be given.

(c) As regards disintegration of property on partition is allowed in regard to heritable property and this is constantly taking place, there is no reason to fear that the inclusion of the daughter alone should make for disintegration. Besides, the share a daughter takes comes back to the daughter in law who also is the daughter in some other family. Provision can be made in regard to certain minor difficulties e.g., in regard to the parental dwelling house a right of pre-emption can be given over a number of years.

Objection—(1) As the son is authorized to give Pinda and is involved in all expenses, he must inherit the property.

Answer—As it is allowable for a widow to give Pinda, there is no reason why the daughter should not be included. However if there is strong religious scruples in regard to this all that is necessary is to provide that a certain percentage of the intestate property be set aside for whoever will offer Pinda and the remainder of the property be divided amongst the simultaneous heirs. Of course if the daughter is only given a half share for the need for this does not arise. In the same manner any debts incurred by the intestate should be paid from the property before it is distributed amongst the heirs.

2 (a) *Stridhan Rules*—In section 13-B we are of opinion that there should be a change by which the son is included as a simultaneous heir with the daughter. The actual share that is allocated to him should be the same as the daughter receives in her father's property i.e. if the daughter receives an equal share then the son should receive an equal share in the mother's property. If the daughter is given $\frac{1}{2}$ share in the father's property then the son should be given a share in his mother's property.

(b) Certain changes are also necessary in the order in which Stridhan devolves on others than the immediate heirs. We are of opinion that Stridhan derived from the father should devolve on the father's heirs before the husband's heirs and vice versa.

3 *The abolition of the limited estate for women*—This of course is a major principle of the Bill with which we are in full accord. Limited estate has not only been the cause of much litigation but is foreign Hindu Law itself. Its abolition is not only a passing reform but must meet with the approval of all those who have the interests of Hindu Law itself. We are purposely refraining from entering into the argument that Hindu women are incapable of being trusted with property such an argument has no value at all and is evidently based on the premise that Hindu women are more backward than the women of all sister communities. We are entirely unwilling to countenance such a proposition or enter into argument in regard to it.

Clause 1(3) of the Bill

Suggested amendment to clause 1(3) of the Bill—The proposed legislation is designed to redress a real grievance of Hindu women and has been undertaken in response to an united demand of the community specially of those of its members who recognize the justice of our cause and the pressing needs of the present conditions of the society. We therefore suggest that unless the Rau Committee is re-appointed immediately to carry out the work of revision and Codification of the whole of Hindu Law there is no valid reason to postpone the operation of the proposed act to 1946 under such circumstances we request that as soon as this Bill on intestate succession is passed it should be enforced. Of course we are strongly of opinion that the Rau Committee should be allowed to complete its work of Codification.

Conclusion—We have put forward our views before the Joint Select Committee after much thought and deliberations. We have considered all practical difficulties and we feel that the solution at which we have arrived should meet with the approval of all. The amendments we have suggested while bringing the Bill into line with the requirements of equity and the social structure of our times has all along kept intact the fundamentals of Hindu Law itself according to the express desire of the authors of the Bill. In proposing the aforesaid amendments we have been careful in avoiding any encroachment on the main principles embodied in the Bill for we are fully aware that the Central Legislature is already committed to the three main principles when it forwarded the Bill for the consideration of the Select Committee of both Houses.

Finally we thank the Chairman and the members of the Joint Select Committee for giving us a patient hearing. We trust that the Committee will consider the amendments we have proposed and will find it possible to incorporate them into the Bill.

Names of Associations fully supporting the main principles of the Hindu Intestate Succession Bill

- 1 All India Women's Conference with 38 branches and 150 sub branches (Membership 15,000)
- 2 National Council of Women
- 3 Arya Mahila Samaj (Bombay)
- 4 Baroda Women's Association
- 5 Bhagini Samaj

*Ajmer Merwara Andhra Assam Baroda Bengal East Bengal West Berar Bombay, Calcutta C P North C P South Cochin Delhi Gujrat Gwalior Hyderabad Deccan, Hyderabad Sind Indore Jath Karnatak Kashmir Kolapur, Konkan Madras Maharashtra, Malabar, Mysore N W Frontier Phaltan Punjab Central Punjab East Sindh Sind, Tamil Nad Travancore Agra Oudh

- 6 Bombay Presidency Social Reform Association.
- 7 Bombay Presidency Women's Council
- 8 Bombay Presidency Women's Indian Association
- 9 Bombay Women's Association—Dadar Branch
- 10 Bombay Women's Association—Santa Cruz Branch
- 11 Cawnpore Women's Association
- 12 Church of Scotland Mission (Bombay Branch)
- 13 Dadar Bhagini Samaj
- 14 Delhi Women's Council
- 15 Delhi Women's League
- 16 Fort Hindu Stree Mandal (Bombay)
- 17 Gujar Ladies Social Club (Bombay)
- 18 Gujarati Hindu Stree Mandal (Bombay)
- 19 Jan Mahila Samaj (Bombay)
- 20 Karmika & Stree Mandal (Bombay)
- 21 Maharanees Chammabai Stree Samaj
- 22 Maharashtra Mahila Mandal Poona
- 23 Mahila Samaj Khar (Bombay)
- 24 Mahila Santh Bombay
- 25 Pathare Prabhu Mahila Samaj (Bombay)
- 26 Prabhashi Ban'la Samaj Delhi
- 27 Public Meeting of Women—Biroda
- 28 Public Meeting of Women—Benares
- 29 Public Meeting of Women—Calcutta
- 30 Public Meeting of Women—Ootacamund
- 31 Saraswati Mahila Samaj (Bombay)
- 32 Seva Sadan (Bombay)
- 33 Suryawanshi Kahatriya Mahila Samaj
- 34 Women's Indian Association Madras
- 35 Young Women's Christian Association (Bombay)
- 36 Ahmednagar Mahila Mandal
- 37 All India Women's Fund Association
- 38 Women's Self Defence Committee Benal (membership 23 000)
- 39 Hindi Mahila Samaj Bombay
- 40 Nari Sabha Hyderabad Sind
- 41 Hyderabad Nari Sabha Sind
- 42 Bhauband Nari Sabha
- 43 Public Meeting of Women at the Arya Samaj Hall Simla
- 44 Prabasi Bengali Women's Samaj Simla
- 45 All Bengal Women's Union

The majority of these Associations have suggested the amendments along the following lines for the consideration of the Select Committee—

- 1 To give the daughter an equal share with the son in the father's property
- 2 The widowed daughter-in-law should get some share of the property which would have gone to her husband if he had been alive.
- 3 The Stridhan rules to be changed so as to allow the son to be a simultaneous heir along with the daughter in the mother's property. The son's actual share to be the same as the daughter's in the father's property.

The only Bombay Women's organization which is not completely in favour of the main principles of the Bill—Dhatri Stree Mandal has a membership of 700 women whereas all Bombay Women's organizations supporting the Bill have a membership of 10 400. See below—

1. Bombay Presidency Women's Council	1 000
2. Bombay Women's Association Bombay	
3. Dadar	1 000
4. Khar antacruz	
5. Gujar Ladies Social Club	300
6. Karmika Stree Mandal Vellore	200
7. Saraswati Mahila Samaj	250
8. Seva Sadan Bombay	250
9. S. W. C. A.	200
10. Fort Hindu Stree Mandal	200
11. Bhagini Samaj (7) years standing	1,000
12. Gujarati Hindu Stree Mandal	2 000
13. Pathare Prabhu Mahila Samaj	300
14. Mahila Samaj Khar	
15. Arya Stree Mandal	

10 400

III

Memorandum submitted to the Joint Committee by the Maharashtra Branch of the All India Women's Conference

In connection with the Hindu Law of Inheritance Amendment Bill which has recently been referred to the Select Committee we want to make the following suggestions which may kindly be considered by the Select Committee.

Clause 2 (1) (c)—The definition of Hindu should be widened to include Converts to Hinduism. The term Hindu to be made applicable to all persons who profess to call themselves Hindus.

Clause 2 (2) (A)—The terms in Hindu Law like dattaka and other adopted sons should be precisely defined for the purposes of the Bill (Merely stating that the terms used in this Sub-clause will have the same meaning as in the Hindu Law leaves them vague). We would favour the recommendation contained in the explanatory note on p. 4 viz: "It is worth considering whether the law should not be further simplified by putting all adopted sons, whatever the form of adoption on the same footing as natural born sons for the purposes of reckoning relationship."

Clause 3—On filing the declaration before a duly constituted authority, any person governed by the Marumakkattayam, Musunnim or Nambudiri law of inheritance should be permitted to be governed by the new Law of Inheritance (The Rau Bill). Such practice will in time tend to unify law all over the land.

Clause 3 (b) 1 and 11—These should be deleted so as to make the law applicable to the devolution of all kinds of property including land.

Clause 5—The list of enumerated heirs is considerably simplified. In our opinion the devolution of property should be limited to agnates only. Distant heirs (cognates) to be excluded in favour of the State.

Clause 7—Is it presumed that this clause will be applicable to those parties who are married before the date on which the Bill becomes an Act (1916 or as the case may be).

Clause 10—In view of the proposed amendment to clause 5 clause 10 becomes redundant. But if the amendment is not agreed to the property should devolve on institutions recognised by the State such as Universities and other educational and health institutions.

Clause 11 (1) (a) (b) (c)—The property in this case should devolve on institutions recognised by the State such as Universities and other educational and health institutions.

Clauses 12 and 13 Stridhan—This term now includes property which is inherited by a woman in her own right. She is also made an absolute owner of her property irrespective of its source. This is a statutory recognition of her equal status in law. The devolution of property provided in 13 (b) accords preferential treatment to women and thereby militates against the principle of equality. The property therefore should devolve according to 13 (a) only.

Clause 18—The

Since both follows is per bequeath more should go to

The Daughter

son. Thus the Bill seems to

safeguard a widow's position right over their property some provision as wife shall have the power to demise or or her property, The remaining property Law of intestacy

ghter is entitled to succeed along with the male and the female issues excepting he son. Once the distinction between is concerned, there is no reason why male issues should not be applied to predeceased married daughter should have taken had she been alive at the

* a predeceased son his share should

* son—Under the Hindu Women's the widows of predeceased (1) son simultaneously with the sons and right under the present Bill under rights should not be curtailed by

the coming Bill

Widows of Gotraja Sapindas—According to the view taken by the Bombay High Court in *Lalubhai v. Mankuyarbai* I L R 2 Bom 783 the widows of Gotraja Sapindas become on marriage Gotraja Sapindas and as such they are entitled to inherit as collaterals and are to be preferred to male Gotrajas in a more remote line. This recognition of widows of Sapindas as heirs in Bombay Presidency is recognised by the Privy Council in *Lalubhai v. Mankuyarbai* L R 7 I A 212. This right of a widow of a Gotraja Sapinda appears to have been taken away by the new Bill. The reason given in both the above cases is no animity. We feel there can be no justification for depriving females of Western India of the right which they have been enjoying for immemorial time only for the sake of achieving unanimity. It can as well be achieved by enabling females in the other parts of India to come in line with those in Western India. We are sure they would certainly India to come in line with those

We ardently hope that the above suggestions will receive careful consideration before the final draft of the Bill by the Select Committee.

IV

Memorandum submitted to the Joint Committee by the Bhatia Stri Mandal, Bombay.

1 The Bill proposes to make for the first time in Hindu the daughter or daughters of a Hindu dying intestate as simultaneous heirs along with the son or sons and widow of a deceased in respect of heritable property of a deceased Hindu.

2 Just as in a joint and undivided Hindu family, the Karta of the family has no right, without legal necessity, or in cases where such a Karta happens to be a father for payment of antecedent debts, to dispose off immovable property belonging to the said joint family, on that analogy, we suggest that when the daughter is given a right to inherit along with her brothers and mother (i.e., the sons and widow respectively of the deceased) the interest which would devolve on the daughter should be subject to the restriction that in respect of immovable property the daughter cannot make a Will or without legal necessity dispose of the immovable property during her lifetime and that on her death, such estate, immovable and movable or such part thereof out of the estate inherited by her from her father as remain at the time of her death, shall devolve upon her children (sons and daughters married or unmarried, equally) and in case there are no children surviving the said deceased daughter the above estate immovable and movable shall devolve upon the brothers (including the children and/or widow, if any, of a predeceased brother living at the time of the death of the said deceased daughter).

3 The above restrictions as to the nature and character of the inheritance that comes to a daughter will ensure that the daughter does not waste or spend away, without legal necessity the inheritance thus received by her and further that her husband and his people would not be able to bring any coercion or pressure upon the said daughter to make available her inheritance for the benefit of the husband or his people. But for the restriction suggested it would be difficult for a wife to withstand or oppose the pressure or coercion from her husband or his people, and thus marital bliss would be seriously embarrassed and disturbed.

4 It seems clear that a son, a son's son and a son's son's son inheriting as one of the simultaneous heirs would as between himself and his sons take such heritable property with all incidents applicable to joint family property. If the existence of a son is not considered as an impediment sufficient to enlarge the character of the estate received by male heirs we do not think the suggested limitation in the case of widows or daughters aforesaid in the character of her estate is unreasonable. Otherwise the Bill as it is at present framed gives larger rights to females succeeding as simultaneous heirs to those given to males.

5 Suggestion made in some quarters that any opposition to this Bill classed as conservative and that it is akin to opposition to the evil system of Satee is hardly convincing besides being irrelevant.

6 We do not approve of the exclusion of the right of a sonless son's widow to inherit as a simultaneous heir according to Deshmukh's Bill. The suggestion in some quarters that a father is likely to take care of a daughter is one which creates an apprehension about a son's widow (daughter in law) being excluded in a Will and her right should therefore be retained. Her character of the estate may be in the same footing as that of a widow.

7 It should be further provided that upon conversion of a widow of a predeceased son or the widow of a predeceased son's predeceased son or daughter married or unmarried to a non-Hindu faith her right to inherit as a simultaneous heir with her brothers and mother (i.e., the sons and widow respectively of the deceased Hindu) shall be lost as if she is civilly dead, otherwise it would be a dangerous and unworkable proposition that when the inheritance opens if a daughter and particularly a married daughter has converted herself from the Hindu faith, still she by legislation be given a right to inherit along with her husband, brothers and mother. There is a strong feeling amongst the Hindu community that rights to be given to Hindu females extensive with her remaining in the Hindu faith before be made not to be applicable as simultaneous heirs.

8 The extent of the share of a widow, if she is the widow of a son, shall be reduced in the case of a son's widow to one-fourth instead of half. Whereas an unmarried daughter would require marriage expenses and her maintenance to be met a married daughter would not need the above facilities and would at the same time be entitled as a member of her husband's family to be maintained and to inherit. It is reasonable that her share should be substantially less than that of an unmarried daughter, we suggest one-fourth that of a son.

9 Section 5, Enumerated heirs.—The Bill proposes to postpone the mother and father of a deceased Hindu to class 2 and wants to introduce the son's daughter and the daughter's daughter as preferential heirs being Nos 3 and 4 in class 1. This is very unsatisfactory and unfair. For illustration let us imagine a case of a daughter's daughter inheriting the estate of a deceased Hindu in preference to the mother or father of the deceased. If the daughter's daughter is of the above of 18 we can easily visualise the case of the mother or the father of the deceased to be not less than about 70. The proposed Bill would give the whole of the estate absolutely to the daughter's daughter who is 18 in our example and would leave the real mother and father who would be 70 years old or over to be maintained by that daughter's daughter. This would be a most ridiculous proposition.

10 It appears that in the present law after the amendment brought about by the Deshmukh's Act, a widow of a predeceased son or a widow of a predeceased grandson of a predeceased father inherits together with the widow of the deceased in the full this right

of the widow has been taken away whilst treating the daughter as simultaneous heir. This would lead to considerable hardship in the case of a widow of predeceased son or grand son. Their right to inherit should be retained as it is at present.

11 *Re Section 2 Sub Clause (2) Sub Clause (2) (b)*—This should be made by an exhaustive definition that for the purpose of determining the classification in which a female heir falls in case of inheritance on intestacy a woman is to be treated as if she was an Agnate of her father and his Agnates. otherwise considerable confusion is likely to arise; since the principles of the change of Gotra by marriage of Hindu woman would be seriously offended and we do not think legislation should or can satisfactorily or effectively bring about a change in the principles relating to religion, usage and personal law of a people. We can appreciate that it may be necessary for conciseness and to avoid considerable details which would be otherwise necessary for detailing the various heirs that an artificial definition should be incorporated and in the circumstances this should be made very clear. The clause as provided does not make it clear since it merely says 'a woman shall be deemed'.

12 *Re Sections 12 and 14*—The rights over Stridhan should not be changed but should be allowed to remain as they are under the present Hindu Law. By its very nature, Stridhan property of a Hindu woman is meant for being used in case of extreme need or urgency equivalent to legal necessity and the law should not permit her to deprive herself of that benefit by giving her an absolute right to dispose of the same during her lifetime without legal necessity. So also, amongst the heirs upon whom the Stridhan of a Hindu woman should devolve, since now under the proposed Bill the daughter is being made an heir jointly with her brother in fairness a corresponding provision should be made that amongst the Stridhan heirs the daughter and sons of a deceased Hindu woman shall be joint heirs.

V

Memorandum supplied by Mr. R. P. Mukherjee at his appearance before the Joint Committee.

POINTS

- 1 Competency of the legislature to legislate in respect of religion and matters in the provinces—
- 2 Time inopportune—
- 3 Procedure adopted—
- 4 Act XVIII of 1937 as to amendments to
- 5 and remove any injustice—
- 6 at least 15 items of defect—
- 7 of whole field—first instance
- 8 some other persons—neither answers to original questionnaire issued by Committee nor opinions received after first draft of the Bill made public—only material explanatory notes and memoranda.

Bengal affected most by Bill—no proper publication—Calcutta Gazette 18th June, 1942 in English—no publication in Bengali or even preps prepared for general information—Bengal Government asked in July different persons and bodies to submit opinions by 15th August, 1942, on two Bills Intestacy and Marriage—India Government fixed 15th September 1942 as last date for Provincial Government—even now copies of the Bill not available to persons and bodies failed to submit opinions within time.

Even now attempt should be made to have larger Committee representing adequately regional and sectional views professing different shades of opinion to visit the more important places affected by Bill, specially Bengal—appreciation of local or sectional problems and opinion absolutely necessary—such procedure would ease public anxiety and minimise opposition to final recommendation made after due consideration of details.

4 Though Bill aims at uniformity result otherwise—one law for non agricultural lands another for agricultural—expectation that provinces will pass similar laws wholly improbable—quite likely particular province or provinces may not accept Bill as drafted for agricultural lands.

One law for Mitakshara coparcenary and special systems in vogue on the Eastern Coast as also Rule of Primogeniture allowed to continue.

Bengal treated differently from rest of by Bill, but ancestral and joint properties earned by different laws in respect of diff persons to execute wills—highly undesirable.

Owing to a change in the law of inheritance.

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Law of maintenance to be settled simultaneously with laws of Inheritance

Legitimate kinship to be decided upon along with the law of marriage—question of Anulom, Prathom Sagotra marriages

Proposal for placing son whether divided undivided or reunited in the same category can not be considered without taking into account the law of partition and reunion

Proposal for placing adopted sons of different classes in same category—effect of giving absolute estates to the simultaneous heirs on the law of Adoption—vesting and divesting of properties on adoption—law of inheritance and law of adoption to be considered together

Proposal for merging Davabhag and Mitakshara in one mould and introducing new provisions affect the law of joint family—implications to be considered along with the law of joint family

If Hindu Law to be codified—still possible to prepare a draft if not of complete Code of co related subjects

6 Whether Davabhag and Mitakshara can or should be substituted by one common Code—Committee's view not abolition of school, but uniformity where possible divergent where inevitable—Committee's ideal of uniformity not achieved, diversity still continuing—fundamental points different between Davabhag and Mitakshara not idiosyncratic but having historical economic and sociological background—even if it be possible to unify sub schools under Mitakshara Davabhag cannot be wholly merged with Mitakshara neither necessary nor desirable—peculiar problems in Bengal—individuality developed during centuries not to be destroyed—Compare position in U S A—deviation from the then British practice largest in matter of inheritance—each State determines its own laws of inheritance—result dissimilar laws in different States—Indian Constitution destined to be Federal—attempt introduction uniformity throughout India at this stage not desirable

7 Religious laws of law should not be abolished—dangerous to introduce new rules principally on supposed grounds of justice and equity—except very small section of urban population life or every Hindu still influenced by and permeated with religious ideals and ceremonies—what appears now to be just and equitable to some bound to be modified with the change in the personnel of persons in authority—Hindu Law principally a matter for Hindus—what majority of Hindus think proper should be accepted—social and religious law not to be a pawn of politics but to be approached from a different angle—social laws specially rules of inheritance not to be the subject matter of constant experiments by successive legislatures

8 Social and economic consideration not to be overlooked—entire structure of Hindu society and legal system based on a family as unit—law to be propounded to keep up that principle—legislature to be very careful if any proposal affects the family as unit

Without considering whether absolute estate to the family heirs supported by original texts or necessary from the present day circumstances the economic factor to be considered

Every Hindu in Bengal affected by Bill—at least 75 per cent dependent on agriculture—agricultural lands now excluded from Bill only 25 per cent of total land under the Bill—according to Flood Commission Report agricultural lands Giving absolute estate to a daughter married in another family can have father a residential house—result sale of that of the small holding—very difficult for poor

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per cent at 30 and 27 per cent at 35 are unmarried

MINUTES OF DISSENT

I am strongly of opinion that in the interest of peace and harmony of all concerned apostasy from religion should be made a disqualification for inheritance. Consequently a Hindu who abandons the Hindu religion or a female Hindu who marries a non Hindu should be disqualified from inheritance. I, therefore disagree with the majority who consider that apostasy should not be a ground of disqualification

SOBHIA SINGH

I am of the opinion that as the Bill deals with the law of intestate succession it should be complete by itself. Hindu opinion is strongly against an apostate inheriting property. Section 20 which refers to disqualifications from succeeding to any property should therefore be complete by itself by referring to apostasy as one of the disqualifications. This would necessitate repeal of the Caste Disabilities Removal Act. I disagree with the view taken by some of my colleagues that the position established by the Caste Disabilities Act should not be disturbed

The Bill has undergone many important changes and so I am of the opinion that the Bill be sent for republication.

GOVIND V. DESHMUKH

The 24th August, 1943

I am against disintegration of Hindu Society. The traditional status and position of the Hindu family must be maintained. With that view I am against much fragmentation of the corpus of the family property. The report runs at bringing on a par with ingredients of Mohammedan Law and Indian Succession Act with those of Hindu Law but the conditions and circumstances of the societies differ vitally.

(a) I would not give a simultaneous share to a married daughter in the parental property. Under the present system she is much better provided for, by her parents and the law lost is mutually retained. Taking away a share to a different family would entail a lot of litigation and blood. Rau Committee agreed with this view but changed it for no substantial reasons.

(b) There may be rare cases of unmarried girls not provided for their upbringing and marriage expenses by the parental family. Thus there arises no necessity of giving her a separate share. But if that is done at all her share should be $\frac{1}{2}$ of the son's share and not $\frac{1}{3}$.

(c) I am in favour of some provision being made for the widow of pre-deceased son provided she remains chaste. Her share should be $\frac{1}{3}$ of a son's share and not $\frac{1}{4}$.

(d) I am not in favour of giving a share to a divided son unless the father has so desired.

(e) If all these fragmentations are allowed, I am in favour of giving $\frac{1}{8}$ share of a son to the father and mother, respectively.

(f) I object to the Act being applied to agricultural land in the centrally administered areas. That will be against the scope of the Bill and the clear provision in clause 3 Proviso (i) with which the Bill was committed to the Select Committee especially when the views of those areas are not obtained on this point.

(g) I would not include the property acquired by a woman by inheritance or at a partition of the family property or in lieu of maintenance or purchased with her husband's funds as Stridhana. That would amount to making no difference between ordinary heritable property and Stridhana. If this is done the Stridhana property should devolve as much upon the son as his sister and not half as much as his sister.

(h) I don't agree with the view that the question of option being given to the male heir to purchase immoveable property inherited along with the male heir on her deciding to dispose of it should be left out from finding its place in this Bill when the report concedes that the legal option should be given.

(i) In my opinion time has not yet arrived to deviate from the reasoned traditional impropriety of granting to women an absolute estate. If the western wave of the women wishing to stand on their own is not reasonably obstructed in India for preserving family system time may arrive to yield to this demand. If however this provision is made law it should be subject to a proviso that the estate will be absolute only when there is no son, son's son or a son of a son's son with the object of keeping the nucleus of the family property intact.

(j) Apostasy should be made a disqualification to inheritance and the Caste Disabilities Removal Act 1850 should be repealed by this Bill. Apostasy in Mohammadan Shariat Law is also a disqualification and that community should have no objection in joining hands to repeal the aforesaid Act by providing its repeal in the schedule attached to the Bill repealing other enactments.

(k) The Bill has been drastically changed and in view of the several important points having been dealt with by the Select Committee the Bill must be republished and circulated to elicit public opinion.

LALCHAND NAVALRAI

The 22nd August 1943

I regret I cannot sign along with those who regret to sign the report of the Joint Committee on the 'amendment and codification of the Hindu Law of Intestate Succession', as it has emanated from the Joint Select Committee. I regret further that I cannot join with those who want to send the report of the same to be republished which means delaying tactics to undo the work. Having disagreement with both I have to submit my own notes on the matter separately.

Referring to the first page of the report I very reluctantly have to submit my differences. I do not think that Mr Joshi had rendered the Joint Committee any appreciable help as an adviser. Our worthy Chairman might have chosen him to be a witness instead of an adviser. Sir B. L. Mitter, the Advocate General, should have been elected as an adviser instead of a witness or somebody who was well versed in Vedic and Sanskrit Sastrie Texts. It must be said to the credit of Mr Joshi that he confessed that he was not a Sanskrit Scholar. Our Chairman was quite competent for the purpose of the Bill. Pandit Desh Pande of Benares University could not help the committee much because he did not give his own opinion but gave interpretation according to his light which did not convince me. He would not accept any interpretation by others so long he was not closetted with him. So his evidence was of no consequence.

Mr Ramaprosad Mukherjee represented the Bangia Brahman Sabha whose idea or opinion is, that whatever is in Sanskrit Text is absolutely unchangeable under any circumstances, they are eternal. Such mentality did not appeal to me as I feel that nothing is unchangeable. Change is the order of nature. But I must confess that Mr Ramaprosad Mukherjee's interpretation of the text, i.e., daughters' inheritance was helpful. He said that unmarried daughters were entitled to inherit in lieu of dowry $\frac{1}{2}$ of brothers' share and if any balance remained, she was entitled to have it after her marriage from her brother. This helped the Committee. Sir B. L. Mitter endorsed that. Sir B. L. Mitter had insisted on giving absolute right to whatever women were entitled to inherit and he insisted very strongly that this Bill should be passed into an Act only when all the analogous parts of Hindu Law, viz marriage endowment, adoption and maintenance would be gone into by fresh committee like Rau Committee and Bills on every subject should be ready for Joint Select Committee. In his opinion codification of Hindu Law could not be complete without this. I fully endorse that. Further the agricultural laws being excluded from the present Bill it remains incomplete.

I do not place much stress on the Vedic texts or Sanskrit texts as I feel that very few Pandits are acquainted with Vedic grammar and real Sanskrit language. Had there been such Pandits there would never have been so varied interpretations. A language has a meaning and if any language gives room for different and varied interpretations then either the language is defective or the interpretations are wrong and it is difficult to select the right one. Meaning cannot be settled by votes. But we have been following certain interpretations by which we have been keeping women deprived of rights of inheritance. This has therefore become Customary Law so to say. It has become a part and parcel with the Hindu Society that 'Women cannot and shall not inherit'. This is absolutely unreasonable. It might have been necessary at certain stages but it is harmful at this stage. This controversy regarding the Vedic Sutras has no charm at this stage. Hindu Law during British Regime has undergone serious change and if codification is needed further changes conducive to the welfare of the Society must be admitted. Sentiment devoid of reason is not worth anything.

Regarding the principles of the Bill the Joint Select Committee agreed or else there could not have been a Joint Select Committee at all.

We desire that Hindu Law should be codified after proper amendments and this should be done neither in a hurry nor in procrastinating way. It should be

could on with circumspection within reasonable time, 1916 is a reasonable suggestion.

Regarding removal of disqualification regarding women's inheritance, I submit there was no disqualification at all as it was proved by reference to *Sutrakars* like *Agastambha* (II 14-16-20) *Smritikars* like *Vishnu* (XVIII 3435) *Manu* (IX 183) *Yajñavalkya* (II 115), etc., when there were no sons daughters inherited. *Stridhan* also led to prove the same.

But I agree that position of women in Hindu Society required improvement and they should be given rights to inherit like male descendants. I fully endorse giving absolute right to all alike who inherit property under Hindu Law. In case of intestate succession—a daughter, daughter in law (widow) and widow wife should have right to inherit.

Regarding codification of Hindu Law I beg to submit that there are four schools of Hindu Law (1) The *Mitākshara* (2) The *Dayabhaga* (3) The Bombay School and (4) The South Indian Hindu Law. For consolidation of Hindus all over India—the Hindu Law prevailing in the Hindu States should also be included within the purview of the Bill. But this Bill has taken into consideration—the *Mitākshara* and the *Dayabhaga* School only. But even in this matter there has been discrimination. The ancestral property under *Mitākshara* School has been excluded, while it has been taken in the *Dayabhaga* School. So this sort of half hearted codification of Hindu Law will not achieve its end. Effort at consolidation is destined to fail if all schools of Hindu Law are not brought under the scope of the Bill. Consolidation signifies inclusion of all Schools into one complete Code.

This Bill was an outcome of the findings of the Ravi Committee which was set up to codify Hindu Law, as piecemeal amendments were not desirable. If codification is not possible on the lines suggested above piecemeal amending Bills should be moved and passed into Acts after proper discussion in the two Houses of Legislature.

Regarding constitution of the Joint Select Committee some members objected to the Moslem and Parsi members taking part in the deliberations during the Committee stage. They have every justification in taking part and our Chairman who was a Moslem could not be replaced by a Hindu who might deal with the matter in a better spirit. He was quite competent and our Moslem and Parsi colleagues were quite competent. But I did not like our Chairman to break the convention. The convention is that Moslem or non Moslems should not vote on matters relating to Hindu Law and Hindus and non Moslems should not vote on matters of Moslem Law. In this Committee that convention has been broken. In my opinion this procedure has vitiated the Bill as it has emanated.

CLAUSES

Clause 1—Of the report page 3 "Where the word 'Hindu' was used in the Bill in clauses 2 (2) (b) and 3 we have substituted the expression 'Persons to whom this Act implies'." is not definite—it is defective—to this might be added *viz.*, the Buddhists, the Jains, the Sikhs, the Brahmos, the Arya Samajists the Scheduled Class, those Moslems to whom this Act applies."

Clause 2—Sub clause (1) Clause (d) I have pointed out the defect in my preliminary observation. The *Mitākshara* ancestral property has been excluded.

Regarding *Stridhan* I have no disagreement. I believe the arrangements made in the way of amendment are quite reasonable and practicable. It leaves no room for change.

Clause 5—Regarding simultaneous heirs whatever had been done by the Committee was done after deliberation. Of course they were carried by majority not unanimously. The Committee thought that this was an important change. I do not agree, the changes were not only desirable but were indispensable for the good of Hindu society. The charge of fragmentation does not stand at all.

Clause 17 should be left untouched and when marriage law will be discussed this clause could then be taken up or else it remains undecided. Valid marriage should be defined before clause 17 is taken up.

In clause 20, no decision having arrived at—is left open—therefore it is incomplete. Regarding adoption and inheritance by remarried females—opinions are sharply divided.

Regarding the opinions placed before the Committee members—it must be confessed that they are neither sufficiently large in number, nor very clear. More clear and numerous opinion could have been more helpful.

Now that by majority it has been decided that the Bill is to be emanated from the Joint Select Committee be re-published I feel inclined to observe that simply by republication matters would not improve as people generally are indifferent. I would suggest that the Joint Select Committee be turned into a Commission of enquiry as has been done in the matter of the "Sarda Bill." While this Commission would be engaged in enquiries in the Provinces, a fresh Rau Committee or a Committee like the Rau Committee could be set up to go over the other Departments of Hindu Law and that the whole of the Bill might be examined together and might be passed into an Act by April 1916. This procedure could sufficiently set at rest all controversies regarding adequate publicity and discussion. Simple republication would be useless.

I believe the Hon'ble the Law Member, the Leader of the House and the Hon'ble the Advocate General would sit together to give these suggestions, shape immediately after the 15th October and continue the work till the whole of Hindu Law would be ready for codification.

AMARI NDRA NATH CHATTOPADHYAYA

DELHI

The 31st August, 1913

I regret I cannot accept the view of some of the Hon'ble Members of the Committee that there ought to be no codification of the Hindu Law. I think a machinery should be set up which should examine the Hindu Law in all its branches and come to definite conclusions. For this purpose a committee consisting of the best Hindu Lawyers in India who have studied the Hindu Law from the Vedic and the Shastric point of view should be constituted. This committee may also include on its personnel some reformers who want to modernise the Hindu Law but they must also be those who have made deep study of the Hindu Law. Besides I am of the opinion that this committee be not set up immediately and they also agree to the same because under the Government they begin to function.

This is very necessary because under the Government it is the Provincial Legislatures who have the power to legislate about the agricultural land. I know the task is stupendous one but it has to be taken up sooner or later. My object in having the Hindu Law codified is to guide the courts in British India to administer and to interpret the Hindu Law uniformly and properly.

The Bill before us seeks to give legal effect to the following three principles—

I Abolition of the several systems of succession and a provision for a common law of intestate succession for all Hindus in British India.

II Removal of sex disqualification so far as inheritance of the property of intestate is concerned.

III Abolition of Hindu women's limited interest and giving absolute right of property to the women over all inherited estate.

For the present I do not agree with first principle noted above. This will be a piece of moral legislation and instead of doing good to the Hindu society, it will do harm by creating bad blood by a legislation of this nature only.

As regards the second point, namely, the removal of sex disqualification, the Vedic or Shastric authority has been cited either by the Rau Committee or by

the supporters of this Bill to carry conviction that the women can become simultaneous heirs in the matter of inheritance to the property. On the other hand some Vedic and Shastric authorities were cited to us by two witnesses before the Committee. But these authorities were ignored by the supporters of the Bill.

It is noteworthy that even the British Courts while administering the Hindu Law during the last one and a half century, in a liberal manner, dared not interpret it without the Vedic or Shastric sanctions. If therefore the reformers desire to effect a change in the fundamentals of the Hindu Law they should openly state that they want to bring about a change whether there is any Vedic or Shastric sanction for such a change or not.

Moreover when a female is married in another family she becomes a 'Gottaja' of her husband's family and loses all her interests in her father's family.

I therefore do not agree with the view of some of my colleagues that the females should be simultaneous heirs with the males because it is the male heirs on whom the religious and secular responsibility of the maintenance of the family traditions devolve.

As regards the third point namely, the removal of ban on the widows inheriting absolute interest in the estate I have to say that it is a logical corollary of the second principle mentioned above. In my opinion a female is not entitled to an absolute interest in an inherited estate as she has no liability or responsibility to discharge. According to shastras a male is entitled to perform the Shradha ceremony of the deceased to the exclusion of the female and so it naturally follows that the male heirs should succeed to the property of a deceased excluding the female heirs. The female heirs are entitled to maintenance according to the status of the family and as such they can be given some share in the property of the deceased with limited interest which interest will on her death devolve on the heirs of the deceased.

I therefore hold the view that for the reasons stated above a female should have only a limited interest in the property of the deceased.

Before I examine some of the important clauses of the Bill I feel compelled to make a general observation.

In recommending the revolutionary changes in the Hindu Law of succession the Rao Committee have shown lack of grasp of the fundamentals on which the Hindu Society is based. It is generally recognised that law of succession is closely inter related to the law of marriage. The prohibited degrees in marriage is peculiar to the Hindu society. Consequently the Hindu law of succession prohibiting women from absolute interest is unique in the world. The prohibition of marriage within certain degrees has the sanction of Hindu religion behind it and any violation of this injunction is looked upon with contempt in the society. Therefore in my view a legislature has no right to enact a law of inheritance which is against the religious, moral and eugenic ideals of the society.

EXAMINATION OF CLAUSES

Definitions — Stridhan. I do not agree with the definition of Stridhan as put in the Bill by the Joint Committee. 'Stridhan' means ornaments, clothes, utensils and other gifts given to female at the time of her marriage or after marriage by parents and other near relatives. Under this Bill it includes property acquired by women by inheritance or otherwise from a male or a female. In my opinion Stridhan should not include property inherited by females from male heirs.

Clause 5 — Simultaneous heirs. I have already stated above that the females cannot be simultaneous heirs with males and as such the daughter should not be a simultaneous heir with the son in inheriting the property of an intestate. But as the Select Committee decided to make daughter a simultaneous heir with the son I was induced to agree to the view that the parents and wife and daughter in law who are dependent on the intestate should also be simultaneous heirs.

heirs In my opinion adequate provision should be made for the maintenance of the above mentioned persons which will be legally binding on the intestate's heirs Provision should also be made for the maintenance and marriage of the unmarried daughters

Heirs Class I—If the right to maintenance has to be safeguarded as has been done in the case of the widow and the widowed daughter in law in Act XVIII of 1937 as amended by Act XI of 1938 or the marriage and education of unmarried girls is to be similarly provided for, all this may be done by a careful adjustment between provision and maintenance on the one side and inheritance on the other Yet in no case the family property should be allowed to disintegrate into bits Women therefore should enjoy limited life interest in property inherited in this way

Clause 13—Stridhan Property—I have indicated above that in my opinion Stridhan should not include property inherited whether from the father's side or the husband's side No confusion arises if such inherited property involves a woman's limited estate ultimately to come to the intestate's next male heir

Succession to a woman's 'Stridhan' would vary as the intestate was married or unmarried and according as she was married in an approved or unapproved form A maiden's property according to all schools passes in the following order and the same be continued—

- 1 Mother
- 2 Mother
- 3 Father
- 4 Father's heirs in propinquity
- 5 Kinsmen of the deceased herself that is her mother's heirs in order of propinquity

Other kinds of 'Stridhan' should pass as follows—

- 1 Unmarried daughter
- 2 Married daughter who is unprovided for
- 3 Married daughter who is provided for and son simultaneously
- 4 Daughter's son or daughter's daughter and son's son simultaneously
- 5 Husband

Clause 20—Apostasy It is essential that the abandonment of religion and conversion from Hindu religion to another religion must be made a ground for disqualification

As the Joint Committee has made important changes and decided to republish and circulate the Bill for eliciting public opinion I do not desire to dwell upon other clauses of the Bill

Before I close I regret I have to note about the irregularity of the proceedings of the Joint Select Committee One member of the Rau Committee who was with us as an adviser actually took part in the deliberations as a full fledged member of the Committee except that he did not vote

Secondly the convention that has been so far observed in the Central Legislature that the members of the other community should not take sides in the measures relating to the personal law of their sister community was broken in the deliberations of the Committee by the Muslim members

V V KALIKAR

NEW DELHI,

The 1st September 1948

I strongly protest against any social legislation being enacted in these abnormal times and specially when the majority of the Hindu elected members are not attending the Central Assembly It does not lie in the mouth of persons whose very existence in the Legislature depend on the pleasure of the Bureaucracy to say that they represent the Congress point of view and Congress Party would have supported them had that Party been present in the Assembly And even if there is any substance in their claim what will there be if they wait for that Party to come in and do not pass a legislation which affects the Hindus and their social and economic structure most vitally in such unbecom-

lurry Besides at the present moment the whole attention of the people as well as the Government should be to unehorate the food situation in the country and to alleviate the miseries and sufferings of the people. The Bill affects the Bengali Hindus more than anybody else and public opinion in Bengal has condemned the proposed legislation in no uncertain terms. The condemnation would have been stronger if the Bill was circulated and if the people of Bengal were not living in close proximity to the war zone and also faced with the gravest famine since the days of the East India Company. These factors alone are strong and sufficient to deter the Government from proceeding with a social legislation which affects the Hindus not only of the present time but the future generations to come. The Bengal Legislative Council has very appropriately passed a resolution that the consideration of the Bill should be postponed till after the war. One of the aims of the Bill is said to be to embody a Common Law of Intestate Succession for all Hindus in British India. That aim remains unfulfilled as the ancestral properties of persons governed by the Mitakshara school remain untouched by the Bill and only the separate property (which is practically negligible) of a person governed by the said school is included in it. The properties of persons governed by the Marumakkattayam, Aliyasantar or Nambudri Law of inheritance are also excluded. Then again the agricultural properties in Governor's Provinces have also been left out for obvious reasons as they are not within the jurisdiction of the Central Legislature. And it is almost certain as can be ascertained from the opinions received that many of the Provinces will refuse to pass any complementary legislation in respect of the agricultural properties.

Many of the clauses in the Bill have been passed in the Joint Committee through the help of non-Hindu votes. Would the Muslims like a Bill affecting their community to be passed with the help of non-Muslim votes?

The proceedings of the Committee have been wholly irregular as Mr. Joshi, a member of the Rau Committee took part in the deliberations of the Joint Committee throughout and was allowed to examine and cross-examine all the witnesses who appeared before the Committee in spite of protests from some of us. There were other outsiders also who were present during the Committee meetings on some days or other.

It is undesirable that a social legislation affecting one particular community should be in charge of a member not belonging to that community who however well intentioned he may be is likely to be misinterpreted and misunderstood by the community such affected.

It is very much to be regretted that copies of deposition of witnesses before the Committee were not made available to members of the Committee and no value has been attached to the evidence adduced.

The Honourable mover of the Bill made a statement in the Council of State on the 1st of April 1943 that he will withdraw the Bill if any *Śruti* text can be shown against the principles of the Bill. Mr. Ramaprasad Mukherjee, an eminent Advocate of the Calcutta High Court who gave evidence before the Committee cited not one but three *Śruti* texts against the principles laid down in the Bill but that had no effect with the Honourable mover. Even the modest suggestion of Sri Brojendra Mitter, the Advocate General of India that clause 1 should be so amended that this legislation even if it is passed should not come into force before the other relevant chapters of Hindu Law are enacted has not been accepted.

The Hindu public opinion has not at all been consulted by the Joint Committee or by the Government and if they do it they will find that opposition to the proposed legislation is of much greater magnitude than they ever imagined.

I am of opinion that the Bill should be re-published and circulated for eliciting public opinion thereon. If the Bill is taken into consideration in spite of what I have stated above I suggest the following amendments to the different clauses of the Bill.

Clause 1 sub clause (4)—It should be so amended that this Act shall not come into force before the whole of the Hindu Law is codified and enacted

Clause 2 Sub clause (d) and the Illustration thereunder—It should be so amended as to exclude the Dayabhaga School from it

Clause 2 sub clause (h)—It should be so amended that property acquired by a woman by inheritance or devise (except an absolute devise) or at a partition is excluded from the definition of 'Stridhana'

Clause 3—It should be amended and the word 'Dayabhaga' be added before the word "Marumakkattayam" in the third line of the said clause

Clause 5 Class I (1)—The word 'unmarried' be added before the word 'daughter' in the first line

Clause 5 Class I (4)—As daughter's daughter is not considered at present an heir under Hindu Law, she should be removed from here and placed in Class II after brother's son's son.

Clause 7, sub clause (d)—It should be deleted and the sentence 'Each of the Intestate's unmarried daughter shall take one fourth share to that of a son' be substituted in its place and the Illustrations be amended accordingly

Clause 12—A woman should have a limited interest over properties inherited by her. It should be so specially in the case of a childless widow otherwise she is likely to take away the property to her father's family or if she chooses to re-marry to her newly married husband's family

Clause 13 Sub clause (b)—(8) and (9) should interchange places

Clause 18—Paragraph 2 beginning with the word "Provided" be deleted

Clause 20—Apostasy should be made a disqualification and the clause should be amended accordingly

The Schedule—It should be amended and "The Caste Disabilities Removal Act of 1850 be included herein

SUSIL KUMAR ROY CHOWDHURY

There are many provisions of the Bill which I can not support. But as the Joint Committee has recommended republication and recirculation of the Bill no useful purpose would be served by a detailed examination and criticism at this stage. Suffice it to say that I am opposed to some of the proposed amendments upon the general principles governing the Hindu Law of Succession as also upon economic grounds

A. C. DATTA

In connection with clause 5 the use of the word 'important' to qualify the changes that have been made in regard to simultaneous heirs is not, in our opinion justified. We dissent from the view that the changes made in Clause 5 of the Bill or for the matter of that in any other clause are of such an important or fundamental character as to justify the recommendation that the Bill should be republished or recirculated. The main principles of the Bill we understand them are (1) that there should be a uniform code of successions for all Hindus in British India (2) the removal of the sex disqualification for inheritance and (3) the abolition of the limited estate for women, and we would point out that none of these principles have been abrogated or modified in the Bill. In Clause 5 to the simultaneous heirs as originally contemplated by the Bill as referred to we have added Parent if dependant upon the deceased and the widowed daughter in law. The inclusion of the widowed daughter in law was left an open question by the Law Committee. It was considered by them and supported by many persons who were consulted by them. Some of the organisations and individuals who sent their opinions had strongly urged that Parent if dependant upon the deceased should be moved up from class (ii) to class (i) in Clause 5 and thus make simultaneous heirs. The addition of these heirs cannot be described as constituting important changes. We are therefore strongly opposed to the republication motion. We may mention that

the addition of the Son as an heir to the Satrium of the Mother in Clause 13 is in our opinion a change which radically alters the Bill. It is unnecessary to the present that such publication should disappear.

P. N. SAPRU
H. N. KUNZRU
RINUKA RAY (MRS.)
S. N. MAITHIA
G. B. NAIRANG
H. INAM

We dissent from the opinion expressed in the Report that the Hindu Law Committee should be reconstituted to encourage the formulation and enactment of the remaining parts of the projected Code. The experience of the last Hindu Law Committee (known as the Rau Committee) does not justify such resurrection at all. The Rau Committee produced only two Bills, the Hindu Intestate Succession Bill and the Hindu Marriage Bill. Both these Bills, in the name of codification and uniformity seek to make revolutionary changes in the very principles of the social order of the Hindus in utter disregard of their age-long traditions. Their proposals if accepted would lead to the disruption of Hindu families and to the disintegration of their family property without any compensating advantages. We hold that codification will make Hindu Law rigid, stereotyped and stagnant. Its process of ever absorbing new contents into the Hindu fold will be stopped. The picture that Rau Committee has drawn of Hindu Law as simple, easily intelligible and capable of being translated into vernaculars for the edification of all Hindus has no relation to realities. Perhaps the Bill under our consideration is the most effective repudiation of the theory of a simple Code.

To draft a simple code of Hindu Law is an almost impossible task. No reason has been advanced why the Government has changed the stand it took when the question of codification of Hindu Law was under debate in the Legislative Assembly in 1921. The Rau Committee can be no substitute for the machinery that the Government then thought necessary for the carrying out of the stupendous task. It is not only more stupendous to-day in the midst of the most gigantic struggle in world's history but the Central Legislature now has got the powers which it had in 1921. It is necessary now to go to the Provincial Legislatures (many of which are not even functioning to-day) to get supplementary legislation passed with regard to Agricultural Land which constitutes the bulk of the heritable property in the country. It is putting the cart before the horse to ask the Central Legislature to enact laws without the support of the Provincial Legislatures beforehand. And if such support be forthcoming from the Provinces action should first be taken under Section 103 of the Constitution Act under which the Central Legislature may be given full powers to enact complete laws for all kinds of properties in British India both agricultural and non agricultural.

The Bill before us seeks to give legal effect to the following three principles—

- (1) Abolition of the several systems of succession obtaining under different schools of Hindu Law and provision for a common law of Intestate Succession for all Hindus in British India.
 - (2) Removal of sex disqualification by which Hindu Women in general have hitherto been precluded from inheriting property in various parts of India.
 - (3) Abolition of Hindu Women's limited estate and giving absolute rights of property to women over all inherited estate.
- If we are unable to accept any one of the above principles. The first of them so far as simplicity is concerned is impossible of achievement as just stated. Different schools of law are in vogue in different parts of India.

Differences like those between Mitakshara and Dayabhaga schools are sometimes fundamental. They have historical economic and sociological background. They cannot wholly be merged into one another. Such merger, moreover, is neither necessary nor desirable. Peculiar problems in Bengal necessitated the Dayabhaga school of law. It has not been accepted in other parts of India in course of centuries. Nor could Mitakshara with its complete sway in most other parts of India could encroach upon Bengal. Both the schools have developed their individuality sometimes exclusive of each other. It is not easy to achieve any organic synthesis which may be acceptable to the Hindus all over India. Any mechanical blending may be disastrous.

The proposed law will mostly affect Bengal, Assam and certain portions of Orissa governed by the Dayabhaga school of law. The other Provinces where the Mitakshara law prevails will not be so much affected. The separate provisions which is included in this Bill of a person governed by the Mitakshara law is practically negligible. The ancestral properties are not affected as they pass by survivorship as distinct from inheritance.

On a reference by the Governor General of India the Federal Court has held that succession in the 1st III of the 7th Schedule of the Constitution Act includes survivorship. This Bill excludes from its operation coparcenary properties governed by the Mitakshara law. After then exclusion it is absurd to say that the Bill gives a common law of Succession to the whole of British India.

The proposed provisions therefore will not achieve uniformity in spite of the radical changes it will introduce. This Bill completely justifies the opinion expressed by John Mayne on the question. That great jurist regarded codification of Hindu Law as a miracle. He said "The age of miracles has passed and I hardly expect to see a code of Hindu Law which will satisfy the trader and the agriculturist, the Punjabi and the Bengali and the Pandits of Benares, Rameswaram, of Amritsar and of Poona. But, I can imagine a very beautiful and spacious code which should produce much more dissatisfaction and expense than the law as at present administered." With unconscious humour the Law Committee quotes this very passage in its report (Page 12).

II As to the second question viz. the so called removal of sex disqualification from our dissent is most emphatic. That women are considered of less importance than men in the matter of inheritance in Hindu society is not sex discrimination as such. But apart from this big sociological question let us consider Shastric authorities on the subject. Our colleagues also ostensibly rely on them though we have not been shown any authoritative text from the Shastras which supports inheritance by women in the way provided for in the bill. Mr. Joshi one of the members of the Rau Committee sat on the Joint Committee acted as if he were a member of it without a vote and was allowed to examine and cross examine all the witnesses who gave evidence before the Committee (we do not know under what rules he did so in spite of protests from some members of the Joint Committee). He also could not help us in the matter. He could not translate and explain Shastric texts even in non Vedic Sanskrit when requested to do so. It is indeed very daring to assert as has been done in the report that "It must be premised and all the scholars agree, that most of the vast Vedic literature has been lost—little remains in it of positive law. We do not understand how the absence of authority, for whatever reason it may be, can itself be an authority. The authority of many relevant texts has been ignored with this remark—'Reliance is placed upon other passages also which have not been referred to by any law giver. If reference to it by a law giver is to be the criterion of a passage being an authority our colleagues will find themselves in a quandary. For both this report and the report of the Rau Committee almost entirely depend on Quotations of Jaunpuri and Saranswami of which no mention has ever been made by any law giver."

We are constrained to say that the interpretation put on several texts by the Rau Committee and our colleagues is not correct. The interpretation of Manu (IX 190) given in Rau Committee's Report (page 16) is obviously

misleading for it refers to an appointed daughter who's brotherless and who thus takes the place of a son and is by her own consent to perpetuate her father's line. Dr Dwarik Nath Mitter in the members of the Rau Committee has quoted Jamuni and Savarswami in his book "Position of women in Hindu Law". One fails to find reference to a brotherless daughter in the Hindu law. He evidently twists interpretation of the texts to suit his preconceived theory propounded in his thesis. The Rau Committee also failed to take into consideration that simultaneous heirship of the daughter with the son is expressly forbidden by the Vedas (Rigveda Samhita III, 31, 2 and Nirukta III, 6). It is regrettable that neither Professor Dasgupta, with his erudite knowledge of Dharmashastra both Vedic and non Vedic nor Mr Ramayasad Mulherjee the well known advocate, and the robust representative of the Brahman Sabha both of whom were placed before the Joint Committee irrefutable Shastrie Texts, including Texts from Shrutis to prove conclusively that females cannot inherit in the presence of males, could make any impression on our colleagues i.e., the majority in our Committee including amongst them the four non Hindu members.

In the opinion of our colleagues to give the right of inheritance to women is advancement as it is progress towards removal of sex disqualification. But advancement is a relative term. They forget that Hindu society is based on the patriarchal family from the Vedic times. It is the man who has the obligation to continue the line by setting up and maintaining the family. The woman has no such responsibility. If she gets any money or property she gets it only for enjoyment. There cannot be any rights without relative duties and responsibilities. Even Rau Committee in their Report (page 15) state that under Hindu Law the son is under a legal obligation to maintain, amongst others, his aged parents, while a daughter is not. But it will be seen that under the provisions of this Bill a daughter will inherit from her father from her father in law and from her husband without any responsibility but to use and enjoy the property herself as she likes the son will have to share his father's estate with his mother, sister, widowed sister in law and dependent parents of his father and will be exclusively burdened with the responsibility of continuing the line and maintaining his paternal family. This is really removal of sex disqualification with vengeance! Apart from Shastrie Injunctions, equity and justice demand that the daughter should not be simultaneous heir with the son.

Another very important consideration in this connection should not be lost sight of. The paramount consideration in any change of law of succession should be the general desire of the property owners about the way in which their property should be devolved after their death. The law of succession was changed in England by the law of Property Act 1925. The Government Spokesmen Sir Leslie Scott the then Solicitor General emphasised that the change in the law was in conformity with the general desire of the property owners as evidenced by the examining of Wills in the Summer-set House. The report here gives the list of women's associations who desire the change, but makes no references whatsoever to the general desire of the property owners. The beneficiaries are heard and are being assisted in dividing the booty. But there is no concern about those whose property is to be so mercilessly divided. This is improper method of approach in investigation and the conclusion cannot be just.

III The third principle of removal of widow's limited estate is but a corollary from the second one. The widow should not get absolute estate in the property she inherits. It must be remembered that the woman gets the limited estate in lieu of maintenance. It is not inheritance as such. The Rau Committee failed to distinguish between women holding or owning property and women inheriting property. Jamuni and Apastamba speak of women owning and possessing property. But Baudhayan speaks of inheriting it. As a woman has no liability or responsibility to discharge all that she wants the property for is to maintain herself and so she generally holds it in trust for the next male heir. Property may be allotted even for her up-keeping or

marriage but not absolutely. Even where the daughter inherits in the absence of a son, in principle she holds it in trust for her own son.

Reference may be made here to the religious aspect of inheritance. Only those who can offer spiritual benefit to the deceased are entitled to inheritance and as women, even daughters, are not capable of doing so they cannot claim inheritance and absolute right to property.

Apostasy should be a disqualification to succeed.

In our opinion the Hindu Women's right to property Acts of 1937 and 1938 should be repealed as even according to the Rau Committee these Acts have proved to be totally unworkable in practice and it has not been easy to interpose the widowed daughter in law in the list of heirs. We strongly believe that if interposition of one widowed daughter in law has caused so much dislocation in the social order and the scheme of inheritance, this Bill which seeks to make simultaneous heirs of so many relatives including even the daughter in presence of the son and radically changes the order of inheritance is bound to create innumerable difficulties in working.

We regret we have not been favoured with replies received to the questionnaire and letters issued by the Rau Committee. These papers would have been of great help to us.

Before we examine the Bill clause by clause we feel compelled to make one more general observation. In recommending the revolutionary changes in the Hindu Law of Succession the Rau Committee have shown lack of grasp of the fundamentals on which the Hindu society is based. It is generally recognised that the law of succession is closely interrelated to the law of marriage. The prohibited degrees in marriage recognised and enforced by Hindu Law have no parallel elsewhere in the world, and consequently the Hindu Law of succession interdicting women from inheritance, as such is unique. The systems of law where prohibited degrees are different, succession by women is possible because property is kept in the family by the marriage of persons in close relationship with each other. For instance, marriage between cousins is allowed and is common in the Christian and Muhammedan societies. Such a marriage is highly incestuous according to Hindu Law and is greatly abhorred by the Hindus. So long as society is based on private property the natural lesson we may say the natural instinct of keeping the property in the family can not be ignored. It is because the marriage between near relations is prohibited by Hindu Law that it was necessary to exclude daughters from inheritance as that would have meant property being broken up and portions passing to distant families. The Hindu Law gives respected the science of eugenics when they laid down the prohibited degrees in marriage. And they respected the property instincts of man when by excluding females from inheritance they provided for the property being kept in the families.

A woman when she marries passes completely out of her father's family and becomes completely merged in her husband's family. Our law giver who had studied the science of sociology perhaps a little better than our ardent reformer dictated by the conferences of society ladies recognised that one of the most potent causes of marital unhappiness was retention of the wife's interest in her father's family. No interest can be of more potent influence than the interest of property. And therefore they provided that a married woman should have generally speaking, no interest in the paternal property. The Rau Committee have signally failed to view the Hindu Law and Hindu society as a scientific whole and we feel that they are entitled to no commendation in that regard.

Definition.—We do not agree with the definition of Stridhan which has been made far too wide. 'Stridhan' originally means ornaments, clothe, utensils and gifts given at the time of marriage by parents and other near relatives. Stridhan under this Bill in our all property acquired by a woman by inheritance or otherwise. Stridhan should not include property inherited from male.

Clause 3.—Simultaneous Heirs.—We are emphatically of the opinion that the right should not be a simultaneous heir and that the estate inherited by

females should be limited Hindu Women's estate and not absolute estate. We have given our reasons in detail above. Parents should not be included as simultaneous heirs. But adequate provisions, legally binding on the intestate's heirs should be made for the maintenance of all whom the intestate was morally bound to maintain, i.e. the widow or widows, the dependant parents, the widowed daughter in law, the widowed grand daughter in law, the widowed great grand daughter in law. The maintenance and marriage of unmarried daughters, fatherless grand daughters and fatherless and grand fatherless great grand daughters, of the intestate should likewise be provided for.

Heirs Class I—If the right to maintenance is to be turned into share as has been done in case of the widow and the widowed daughter in law in Act XVIII of 1937 as amended by Act XI of 1939 or the marriage and education of unmarried girls is to be similarly provided for all this may be done by a careful adjustment between provision and maintenance on the one side and inheritance on the other. Yet in no case the family property should be allowed to disintegrate into bits. Women therefore, should enjoy limited life interest in property inherited in this way. The unmarried daughter may get a fourth of her each brother's share as a guarantee, so to say, against her marriage maintenance and educational expenses. In this arrangement for the unmarried daughter our witnesses were unanimous as was also the Committee.

Daughter's daughter is not an heir at all and is considered a distant relation. She should not come under Class I but in Class II after brother's son's son.

Clause 13—Stridhan Property—We have indicated above that in our opinion 'Stridhan' should not include property inherited from males whether from the father's side or from the husband's side. No confusion arises if such inherited property involves women's limited estate ultimately to come to the intestate's next male heir.

Barring this the intestate's 'Stridhan' should be inherited in the following order, viz.—

- (1) daughter (2) son (3) husband (4) daughter's son and daughter's daughter (5) son's son and son's daughter

Clause 20—As we have already said, it is essential that the abandonment of the Hindu religion and conversion to another religion must be made a ground for disqualification from inheritance.

As the Joint Committee has decided that the Bill should be recirculated we do not desire to dwell upon other clauses of the Bill.

Lastly we note with extreme regret the flagrant breach in the case of this Bill of the salutary convention that in consideration of social measures affecting one community only members belonging to other communities should not take part. But in this case the non-Hindu members taken into the Committee took part in deliberations on controversial questions and influenced the decisions of the Committee and that in almost all cases against the wishes of the majority of the Hindu members.

NILAKANTHA DAS
BAJNATH BAJORIA

We are of opinion that simultaneously with a change in the Law of Intestate Succession as proposed by us in this Bill Government should take steps to repeal Act XXI of 1850 in so far as it affects succession to the property of a Hindu intestate so that renunciation of the Hindu religion may be a bar to inheritance under the Hindu Law. There is a strong feeling in the Hindu community which we share that apostasy i.e. change of religion should be a disqualification for inheritance in the case of a Hindu. Whether the Act of 1850 should be dealt with separately or the change that we desire should be effected by the insertion of a suitable provision in the Hindu Code Part I (Intestate Succession) Bill is a matter which we leave to Government to decide.

All that we urge is that a change of religion should in future disqualify an heir in the absence of an express will to the contrary from inheriting property under the Hindu Law, but conversion to sects or creeds of Hindu origin such as Buddhism, Jainism, Sikhism, the Brahmo Samaj, the Prarthana Samaj, or the Arya Samaj should not be regarded as a disqualification. We make this suggestion as we have been impressed with the strength of Hindu sentiment on this question, and as we think that it is intrinsically sound and not inconsistent with any principle of freedom of conscience in which we believe. The property to be disposed of in the case of a Hindu intestate is after all that of a Hindu and it may reasonably be assumed that he would have liked it to go to heirs who profess his religion. The Hindu Law treats apostasy as a disqualification for inheritance. We can see no reason why this provision of the Hindu Law should not be given effect to in the case of succession to a Hindu intestate.

H N KUNZRU

P N SAPRU

S N MAHTHA

L A BILL No 26 OF 1912

[AS AMENDED BY THE JOINT COMMITTEE.]

(Words underlined or italicized indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A Bill to amend and codify the Hindu Law relating to intestate succession.

WHEREAS it is expedient to amend and codify, in successive stages, the whole of the Hindu Law now in force in British India,

AND WHEREAS it is expedient first to amend and codify the general law of intestate succession

It is hereby enacted as follows—

PRELIMINARY

1 *Short title, extent, application and commencement.*—(1) This Act may be called the Hindu Code Part I (Intestate Succession)

(2) It extends to the whole of British India

(3) It shall apply to any person who, if this Act were not in force, would be governed in matters of intestate succession by the Hindu Law, but it shall not apply—

(i) to agricultural land except in the Chief Commissioners' Provinces, or
(ii) to any estate which descends to a single heir by a customary or other rule of succession or by the terms of any grant or enactment

(4) It shall come into force on the 1st day of January, 1916

2 *Definitions and interpretation.*—(1) In this Act unless there is anything repugnant in the subject or context—

(a) a person is said to be an "agnate" (*gotraja*) of another if the two are related by blood wholly through males

(b) a person is said to be a "cognate" (*bandhuja*) of another if the two are related by blood but not wholly through males

(c) "heir" means any person male or female, who is entitled to succeed to the property of an intestate under this Act

(d) "hereditary property" means property which belongs to an intestate in his or her own right and passes, whether he dies leaving male issue or not, by inheritance as distinct from survivorship

Illustrations

All property of a Hindu governed by the Dayabhaga School of Hindu Law is hereditary property, as property passes by inheritance and not by survivorship, as too is the separate property of a Hindu governed by any Mitakshara School of Hindu Law, as also the property in the hands of the last surviving coparcener, as such property also passes by inheritance.

(e) related means related by legitimate kinship and any word expressing relationship or denoting a relative shall be construed accordingly

(f) two persons are said to be related to each other by * 'full blood' when they are descended from a common ancestor by the same wife and by * 'half blood' when they are descended from a common ancestor by different wives

(g) son' includes a *dattaka* son *dyudmushyayana* son and *kritrima* son but not a *dāsi*putra and *dattala* son *dyudmushyayana* son *kritrima* son and *dāsi*putra have the same meanings as in the Hindu Law

(h) "stridhana" means property acquired by a woman by inheritance or devise or at a partition or by way of absolute gift in lieu of maintenance or arrears of maintenance or by gift from a relative or stranger before at or after her marriage or by her own skill or exertions or by purchase or by prescription or by any other mode whatsoever

(2) In this Act unless there is anything repugnant in the subject or context words importing the masculine gender shall not be taken to include females and for the purposes of this Act—

(a) a person is deemed to die intestate in respect of all property of which he or she has not made a testamentary disposition capable of taking effect.

(b) the domicile of a person to whom this Act applies shall be determined in accordance with the provisions contained in sections 6 to 18 both inclusive of the Indian Succession Act 1925 (XIX of 1925),

(c) when an adoption takes place—

(i) in the case of a *dattaka* son the natural tie is severed and is replaced by the tie created by the adoption

(ii) in the case of a *dyudmushyayana* son the natural tie continues side by side with the tie created by the adoption

(iii) in the case of a *kritrima* son the natural tie continues while the tie created by the adoption is limited to the person adopted and the person or persons adopting him

Illustrations

A adopts C son of B. C has a son D born to him after the adoption. Then for the purposes of inheritance the following consequences will result depending upon whether C was adopted as a *dattaka* *Dyudmushyayana* or *kritrima* son of A.

If C was adopted as a *dattaka* son he becomes the son of A and ceases to be the son of B. He also becomes the grandson of A's father and the nephew of A's brother and so on. He ceases to be the grandson of B's father and the nephew of B's brother. Likewise D becomes the grandson of A but not of B.

If C was adopted as a *dyudmushyayana* son he becomes the son of A but continues to be the son of B as well. He also becomes the grandson of A's father and the nephew of A's brother but continues as well to be the grandson of B's father and the nephew of B's brother. Likewise D becomes the grandson of A and of B as well.

If C was adopted as a *kritrima* son he becomes the son of A while continuing to be the son of B as well. He does not however become the grandson of A's father or the nephew of A's brother but remains the grandson of B's father and the nephew of B's brother. D on birth becomes the grandson of B and not of A.

3 Application of Act—This Act regulates the succession to the heritable property of a person to whom this Act applies other than one governed by the Marumakkattayam Ahyasantana or Nambudri law of inheritance dying intestate after the commencement of this Act in the following cases namely—

(a) where the property is movable property unless it is proved that the intestate was not domiciled in British India at the time of death.

(b) where the property is immovable property situated in British India whether at the time of death the intestate was domiciled in British India or not.

Provided * that upon the death of any woman who at the commencement of this Act had the limited estate known as the Hindu woman's estate in any heritable property such property shall devolve on the persons who would

this Act have been the heirs of the last full owner thereof if he had died intestate immediately after her

Succession to the property of males

4 *Devolution of heritable property of males*—The heritable property of a male intestate shall devolve according to the rules laid down in this Act—

- (a) upon the enumerated heirs referred to in section 5 if any
- (b) if there is no enumerated heir upon his agnates, if any,
- (c) if there is no agnate upon his cognates if any,
- (d) if there is no cognate upon the heirs referred to in section 10 if any

5 *Enumerated heirs*—The following relatives of an intestate are his enumerated heirs—

Class I—Parents unless a descendant and widow of descendant—

(1) Parents if dependant on the intestate widow, son daughter, son and widow of a pre deceased son and son of a pre deceased son of a pre deceased son (the heirs in this entry being hereinafter in this Act referred to as simultaneous heirs)

- (2) Daughter & son
- (3) Son & daughter
- (4) Daughter & daughter

Class II—Mother father and his descendants—

(1) Mother unless as dependant on the intestate she has inherited as heir included in entry (1) of Class I

(2) Father unless as dependant on the intestate he has inherited as heir included in entry (1) of Class I.

- (3) Brother
- (4) Brother & son
- (5) Brother & son & son
- (6) Sister
- (7) Sister & son
- (8) Brother & daughter
- (9) Sister's daughter

Class III—Father's mother father's father and his descendants—

- (1) Father's mother
- (2) Father's father
- (3) Father's brother
- (4) Father's brother & son
- (5) Father's brother & son & son
- (6) Father's sister & son

Class IV—Father's father's mother father's father's father and his descendants—

- (1) Father's father's mother
- (2) Father's father's father
- (3) Father's father's brother
- (4) Father's father's brother & son
- (5) Father's father's brother & son & son
- (6) Father's father's sister & son

Class V—Mother's mother mother's father and his descendants—

- (1) Mother's mother
- (2) Mother's father
- (3) Mother's brother
- (4) Mother's brother & son
- (5) Mother's brother & son & son
- (6) Mother's sister & son

6 *Order of succession among enumerated heirs*—Among the enumerated heirs those in one Class shall be preferred to those in another Class

and within each Class, those included in one entry shall be preferred to those included in any succeeding entry while those included in the same entry shall take together

Illustrations

(i) The surviving relatives of an intestate are his widow his mother and his father's father. The widow who is included in Class I is preferred to the mother who is in Class II and the father's father who is in Class III

(ii) The surviving relatives are two daughters and a son's daughter. The daughters who are included in entry (1) of Class I are preferred to the son's daughter who is in entry (3) of the same Class and the two daughters take together

(iii) The surviving relatives are a widow two sons three daughters two grandsons by a pre-deceased son and a great grandson by another pre-deceased son's pre-deceased son. All of them being enumerated heirs included in entry (1) of Class I succeed simultaneously to one excluding the others

7 *Manner of distribution among simultaneous heirs*—The distribution of an intestate's property among the simultaneous heirs in entry (1) of Class I shall take place according to the following rules namely—

(a) The intestate's widow or if there is more than one widow all the widows together, shall take one share

(b) Each son of the intestate shall take one share whether he was undivided or divided from or reunited with, the intestate

(c) Sons sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons shall take *per stirpes*, that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him if he had been alive at the time of the intestate's death, and likewise, the grandsons of a pre-deceased son shall take the share which their father would have taken if he had been alive at the time aforesaid

(d) Each of the intestate's daughters shall take half a share, whether she is unmarried, married or a widow rich or poor, and with or without issue or possibility of issue

(e) Each parent shall take one eighth of a share, but any property so inherited shall on his or her dying intestate devolve upon the heirs of the intestate son from whom the property was so inherited in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof at the time of the parent's death

(f) The widow of a pre-deceased son, if she has no son or son's son surviving shall take half the share which her husband would have received if he had been alive at the time of his father's death, and if she has a son or son's son surviving she shall take one fourth of the share which her husband would have received if he had been alive at the time of his father's death, and the son or grandson's share receivable under clause (c) of this section shall be reduced accordingly

Illustrations

(i) The surviving relatives of an intestate are three sons five grandsons by a pre-deceased son and two great-grandsons by a pre-deceased son of another pre-deceased son. Each son takes 1/5th of the heritable estate each grandson 1/25th, and each great-grandson 1/125th

(ii) Only a widow or daughter, and no other simultaneous heir, survives an intestate. The widow or daughter, as the case may be, takes the whole of the heritable estate

(iii) The surviving relatives of an intestate are two widows, a divided son, two undivided sons, an unmarried daughter, two married daughters, a widowed daughter and four grandsons by a pre-deceased son. The two widows together take one share, each of the three sons takes one share each of the four daughters takes half a share and the four grandsons together take one share. Thus each widow takes 1/14th of the heritable estate each son 1/7th each daughter 1/14th and each grandson 1/28th

8 *Order of succession among non enumerated heirs*—(1) The order of succession among agnates and cognates, other than enumerated heirs, shall be determined by applying the Rules of Preference in section 9

(2) For the purpose of applying the said Rules, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent, as both, as the case may be

this Act have been the heirs of the last full owner thereof if he had died intestate immediately after her

Succession to the property of males

4 *Devolution of heritable property of males*—The heritable property of a male intestate shall devolve according to the rules laid down in this Act—

- (a) upon the enumerated heirs referred to in section 5 if any
- (b) if there is no enumerated heir, upon his agnates, if any,
- (c) if there is no agnate upon his cognates if any,
- (d) if there is no cognate upon the heirs referred to in section 10, if any

5 *Enumerated heirs*—The following relatives of an intestate are his enumerated heirs—

Class I—Parent unless descendants and widow of descendant—

(1) Parents if dependant on the intestate, widow, son daughter, son and widow of a pre deceased son and son of a pre deceased son of a pre deceased son (the heirs in this entry being hereinafter in this Act referred to as 'simultaneous heirs')

- (2) Daughter's son
- (3) Son's daughter
- (4) Daughter's daughter

Class II—Mother father and his descendants—

(1) Mother unless as dependent on the intestate she has inherited as an heir included in entry (1) of Class I

(2) Father unless as dependent on the intestate he has inherited as an heir included in entry (1) of Class I

- (3) Brother
- (4) Brother's son
- (5) Brother's son's son
- (6) Sister
- (7) Sister's son
- (8) Brother's daughter
- (9) Sister's daughter

Class III—Father's mother father's father and his descendants—

- (1) Father's mother
- (2) Father's father
- (3) Father's brother
- (4) Father's brother's son
- (5) Father's brother's son's son
- (6) Father's sister's son

Class IV—Father's father's mother father's father's father and his descendants—

- (1) Father's father's mother
- (2) Father's father's father
- (3) Father's father's brother
- (4) Father's father's brother's son
- (5) Father's father's brother's son's son
- (6) Father's father's sister's son

Class V—Mother's mother mother's father and his descendants—

- (1) Mother's mother
- (2) Mother's father
- (3) Mother's brother
- (4) Mother's brother's son
- (5) Mother's brother's son's son
- (6) Mother's sister's son

6 *Order of succession among enumerated heirs*—Among the enumerated heirs those in one Class shall be those in any succeeding Class

and within each Class, those included in one entry shall be preferred to those included in any succeeding entry while those included in the same entry shall take together

Illustrations

(i) The surviving relatives of an intestate are his widow, his mother and his father's father. The widow who is included in Class I is preferred to the mother who is in Class II and the father's father who is in Class III

(ii) The surviving relatives are two daughters and a son's daughter. The daughters who are included in entry (1) of Class I are preferred to the son's daughter who is in entry (3) of the same Class and the two daughters take together

(iii) The surviving relatives are a widow, two sons, three daughters, two grandsons by a pre-deceased son and a great grandson by another pre-deceased son's pre-deceased son. All of them being enumerated heirs included in entry (1) of Class I succeed simultaneously to one excluding the others

7 Manner of distribution among simultaneous heirs—The distribution of an intestate's property among the simultaneous heirs in entry (1) of Class I shall take place according to the following rules, namely—

(a) The intestate's widow, or if there is more than one widow all the widows together, shall take one share

(b) Each son of the intestate shall take one share whether he was undivided or divided from or re-united with, the intestate

(c) Sons of pre-deceased sons, and sons of pre-deceased sons of pre-deceased sons shall take *per stirpes* that is to say, the sons of a pre-deceased son shall take the share which would have been taken by him if he had been alive at the time of the intestate's death, and likewise, the grandsons of a pre-deceased son shall take the share which their father would have taken if he had been alive at the time aforesaid

(d) Each of the intestate's daughters shall take half a share, whether she is unmarried, married or a widow rich or poor and with or without issue or possibility of issue

(e) Each parent shall take one eighth of a share, but any property so inherited shall on his or her dying intestate devolve upon the heirs of the intestate son from whom the property was so inherited in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof at the time of the parent's death

(f) The widow of a pre-deceased son, if she has no son or son's son surviving shall take half the share which her husband would have received if he had been alive at the time of his father's death, and if she has a son or son's son surviving she shall take one fourth of the share which her husband would have received if he had been alive at the time of his father's death, and the son's grandson's share receivable under clause (c) of this section shall be added accordingly

Illustrations

(i) The surviving relatives of an intestate are three sons, five grandsons by a pre-deceased son and two great-grandsons by a pre-deceased son of another pre-deceased son. Each son takes 1/5th of the heritable estate, each grandson 1/25th, and each grand-son 1/10th

(ii) Only a widow or daughter, and no other simultaneous heir, survives. The widow or daughter, as the case may be, takes the whole of the property

(iii) The surviving relatives of an intestate are two widows, a divided son, an unmarried daughter, two married daughters, a widowed grand-son by a pre-deceased son. The two widows together take one share, the unmarried daughter, the two married daughters together take one share, the three sons take one share each, the four daughters take half a share, the grand-sons together take one share. Thus each widow takes 1/14th, the son 1/7th, each daughter 1/14th and each grandson 1/28th

8 Order of succession among non enumerated heirs—(1) The order of succession among agnates and cognates, other than enumerated heirs, shall be determined by applying the Rules of Preference in section 2

(2) For the purpose of applying the said Rules, reference shall be made from the intestate to the heir in terms of degrees of relationship, and both as the case may be

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below —

Illustrations

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent but three degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but four degrees of ascent represented, in order, by (1) the intestate's father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but four degrees of descent represented, in order, by (1) the intestate's son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented, in order, by (1) the intestate's mother (2) her father, and (3) that father's father, and two degrees of descent represented, in order by (1) the daughter of the common ancestor, viz., the mother's father's father, and (2) her son (the heir).

(4) A woman shall be entitled to inherit as an agnate of her father and his agnates, and shall not, by reason only of her marriage, be entitled to inherit as an agnate of her husband or his agnates.

9. Rules of Preference — The Rules of Preference referred to in section 8 are as follows —

Rule 1 — Of two heirs the one who has fewer or no degrees of ascent is preferred.

Rule 2 — Where the number of degrees of ascent is the same or none that heir is preferred who has fewer or no degrees of descent.

Rule 3 — Where the number of degrees of descent is also the same or none, the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4 — Where neither heir is entitled to be preferred to the other under the foregoing Rules, they take together.

Illustrations

In the following illustrations the letters F and M stand respectively for the father and the mother in that portion of the line which ascends from the intestate to the common ancestor, and the letters S and D for the son and the daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDS for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) FFS (father's brother's daughter) and (2) FDS (sister's daughter's son). Although No (2) is descended from a nearer ancestor yet as No (1) is an agnate while No (2) is only a cognate, No (1) is preferred to No (2).

(ii) The competing heirs are (1) SDSS (son's daughter's son's son) and (2) FDDS (father's daughter's daughter's son). No (1) who has no degree of ascent is preferred to No (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (father's daughter's daughter's daughter) and (2) MFSD (mother's father's son's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDS (father's daughter's son) and (2) MFSS (mother's father's son's son). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFSS (mother's father's son's son) and (2) MFSS (mother's father's sister's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFSS (mother's father's mother) and (2) FFFSS (father's father's father's son's son). The number of degrees of ascent in both cases is the same, three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FMS (father's mother's son) and (2) MFS (mother's father's son). The number of degrees of ascent in both cases is the same, and there are no degrees of descent. The lines of the two heirs diverge at the very first point. No (1) being in the male line and No (2) in the female line, No (1) is preferred to No (2).

(viii) The competing heirs are (1) FDS (father's daughter's son) and (2) FDDS (father's daughter's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point No (1) is in the male line and No (2) in the female line. No (1) is therefore preferred.

(ix) The competing heirs are (1) FMS (father's mother's son) and (2) FMS (father's mother's son's son). The former is preferred.

(x) The competing heirs are (1) FDDS (sister's daughter's son) and (2) FDDD (sister's daughter's daughter). The former is preferred.

(x) The competing heirs are a daughter's daughter's son of one sister (FDDDS) and a daughter's daughter's son of another sister (IDDDS). Both of them take the estate in equal shares.

10 *Heirs not related by blood*—If there is no cognate entitled to succeed under section 4 the heritable property of the intestate shall devolve in the first instance upon his preceptor (*acharya*) if there is no preceptor upon the intestate's disciple (*sisya*) and if there is no disciple upon the intestate's fellow student (*sa brahmachari*).

11 *Rules for hermits, etc*—(1) Where a person completely and finally renounces the world by becoming a hermit (*udnaprastha*) an ascetic (*yati* or *sanyasi*) or a perpetual religious student (*naishtika brahmachari*) his property shall devolve upon his heirs in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any person who has so renounced the world shall not inherit to any relative of his by blood or marriage but the inheritance shall in such a case, pass to the heir who is next in the order of succession.

(3) Any property acquired by such a person after his renunciation shall, on his death devolve not upon his relatives by blood or marriage but as follows—

(a) in the case of a hermit upon a spiritual brother belonging to the same hermitage (*dharmabhratratirithi*)

(b) in the case of an ascetic upon his virtuous disciple (*sacchishya*)

(c) in the case of a perpetual religious student upon his preceptor (*acharya*)

Stridhana

12 *Right of women over stridhana*—A woman shall have the same rights over her *stridhana* including the right to dispose of it by transfer *inter vivos* or by will as a man has over property acquired by him in the like manner that is to say a woman's rights over her *stridhana* shall not be deemed to be restricted in any respect whatsoever by reason only of her sex.

13 *Order of succession to stridhana*—The *stridhana* of a woman dying intestate in so far as it consists of heritable property shall devolve as follows—

(a) Property inherited by her from her husband or his father his father's father or his father's father's father shall devolve upon her husband's heirs in the same order and according to the same rules as would have applied if the property had been her husband's and he had died intestate in respect thereof immediately after her death.

Explanation—For the purposes of this clause property devolving on another widow of the husband whether under this clause or under entry (9) in clause (b) shall be deemed to be property inherited by such widow from her husband.

(b) Other property shall devolve upon the following relatives of the intestate in the order mentioned namely—

(1) Son and daughter

(2) Daughter's son and daughter's daughter

(3) Son's son and son's daughter

(4) Husband,

(5) Mother

(6) Father,

(7) Husband's heirs in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death.

(8) Mother's heirs in the same order and according to the same rules as would have applied if the property had been hers and she had died intestate in respect thereof immediately after her daughter's death.

(3) Degrees of ascent and degrees of descent shall be computed in the manner indicated in the illustrations below —

Illustrations

(i) The heir to be considered is the father's mother's father of the intestate. He has no degrees of descent but three degrees of ascent represented, in order, by (1) the intestate father, (2) that father's mother, and (3) her father (the heir).

(ii) The heir to be considered is the father's mother's father's mother of the intestate. She has no degrees of descent, but four degrees of ascent represented, in order, by (1) the intestate father, (2) that father's mother, (3) her father, and (4) his mother (the heir).

(iii) The heir to be considered is the son's daughter's son's daughter of the intestate. She has no degrees of ascent, but four degrees of descent represented, in order, by (1) the intestate son, (2) that son's daughter, (3) her son, and (4) his daughter (the heir).

(iv) The heir to be considered is the mother's father's father's daughter's son of the intestate. He has three degrees of ascent represented, in order, by (1) the intestate mother, (2) her father, and (3) that father's father, and two degrees of descent represented, in order, by (1) the daughter of the common ancestor, and (2) the mother's father's father, and (2) her son (the heir).

(4) A woman shall be entitled to inherit as an agnate of her father and his agnates, and shall not, by reason only of her marriage, be entitled to inherit as an agnate of her husband or his agnates.

9. *Rules of Preference* — The Rules of Preference referred to in section are as follows —

Rule 1 — Of two heirs the one who has fewer or no degrees of ascent is preferred.

Rule 2 — Where the number of degrees of ascent is the same or none the heir is preferred who has fewer or no degrees of descent.

Rule 3 — Where the number of degrees of descent is also the same or none the heir who is in the male line is preferred to the heir who is in the female line at the first point (counting from the intestate to the heir) where the lines of the two heirs can be so distinguished.

Rule 4 — Where neither heir is entitled to be preferred to the other under the foregoing Rules they take together.

Illustrations

In the following illustrations the letters F and M stand respectively for the father and the mother in that portion of the line which ascends from the intestate to the common ancestor and the letters S and D for the son and the daughter respectively in that portion of the line which descends from the common ancestor to the heir. Thus MFSS stands for the intestate's mother's father's son's son (mother's brother's son) and FDD for the intestate's father's daughter's son (sister's son).

(i) The competing heirs are (1) FFSD (father's brother's daughter) and (2) FDD (sister's daughter's son). Although No (2) is descended from a nearer ancestor yet No (1) is an agnate while No (2) is only a cognate, No (1) is preferred to No (2).

(ii) The competing heirs are (1) SDSS (son's daughter's son's son) and (2) FDD (sister's daughter's son). No (1) who has no degree of ascent is preferred to No (2) who has one degree of ascent.

(iii) The competing heirs are (1) FDDD (sister's daughter's daughter) and (2) MFSD (maternal uncle's daughter). The former who has one degree of ascent is preferred to the latter who has two such degrees.

(iv) The competing heirs are (1) FDSSS (sister's son's son's son) and (2) MFSSD (maternal uncle's son's daughter). The former who has only one degree of ascent is preferred to the latter who has two such degrees.

(v) The competing heirs are (1) MFDS (mother's sister's son's son) and (2) MFDD (mother's father's daughter's son). The former who has two degrees of ascent is preferred to the latter who has three such degrees.

(vi) The competing heirs are (1) MFM (mother's father's mother) and (2) FFFDS (father's father's sister's son's son). The number of degrees of ascent in both cases is the same, viz three, but the former has no degree of descent while the latter has three such degrees. The former is therefore preferred.

(vii) The competing heirs are (1) FMF (father's mother's father) and (2) MFM (mother's father's mother). The number of degrees of ascent in both cases is the same and there are no degrees of descent. The lines of the two heirs diverge at the very first point. No (1) being in the male line and No (2) in the female line. No (1) is preferred to No (2).

(viii) The competing heirs are (1) FDSS (sister's son's son) and (2) FDD (sister's daughter's son). The heirs are equally near both in ascent and descent. The dissimilarity in the lines occurs at the third point. At this point No (1) is in the male line and No (2) in the female line. No (1) is therefore preferred.

(ix) The competing heirs are (1) FMFSS (father's mother's brother's son) and (2) FMFDD (father's mother's sister's son). The former is preferred.

(2) The competing heirs are (1) DDD (sister's daughter's son) and (2) DDD (sister's daughter's daughter). If there is no issue.

(3) The competing heirs are a daughter's daughter's son of one sister (DDDS) and a daughter's daughter's son of another sister (DDDS). Both of them take the estate in equal shares.

10 *Heirs not related by blood*—If there is no cognate entitled to succeed under section 4 the heritable property of the intestate shall devolve, in the first instance upon his preceptor (*acharya*) if there is no preceptor upon the intestate's disciple (*shishu*) and if there is no disciple upon the intestate's fellow student (*sa brāhmachāri*).

11 *Rules for hermits, etc.*—(1) Where a person completely and finally renounces the world by becoming a hermit (*rānaprastha*) an ascetic (*yati* or *sanyāsi*) or a perpetual religious student (*nausthika brahmachāri*) his property shall devolve upon his heirs in the same order and according to the same rules as would have applied if he had died intestate in respect thereof at the time of such renunciation.

(2) Any person who has so renounced the world shall not inherit to any relative of his by blood or marriage but the inheritance shall in such a case, pass to the heir who is next in the order of succession.

(3) Any property acquired by such a person after his renunciation shall, at his death devolve, not upon his relatives by blood or marriage but as follows—

(a) in the case of a hermit upon a spiritual brother belonging to the same hermitage (*dharma bhratrātirthi*),

(b) in the case of an ascetic upon his virtuous disciple (*sacchishya*)

(c) in the case of a perpetual religious student upon his preceptor (*dchārya*)

Stridhana

12 *Right of women over stridhana*—A woman shall have the same rights over her *stridhana* including the right to dispose of it by transfer *inter vivos* or by will as a man has over property acquired by him in the like manner that is to say a woman's rights over her *stridhana* shall not be deemed to be restricted in any respect whatsoever by reason only of her sex.

13 *Order of succession to stridhana*—The *stridhana* of a woman dying intestate in so far as it consists of heritable property shall devolve as follows—

(a) Property inherited by her from her husband or his father his father's father or his father's father's father shall devolve upon her husband's heirs in the same order and according to the same rules as would have applied if the property had been her husband's and he had died intestate in respect thereof immediately after her death.

Explanation—For the purposes of this clause property devolving on another widow of the husband whether under this clause or under entry (9) in clause (b) shall be deemed to be property inherited by such widow from her husband.

(b) Other property shall devolve upon the following relatives of the intestate in the order mentioned namely—

(1) Son and daughter

(2) Daughter's son and daughter's daughter

(3) Son's son and son's daughter,

(4) Husband,

(5) Mother

(6) Father

(7) Husband's heirs in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his wife's death.

(8) Mother's heirs in the same order and according to the same rules as would have applied if the property had been hers and she had died intestate in respect thereof immediately after her daughter's death.

(9) Father's heirs, in the same order and according to the same rules as would have applied if the property had been his and he had died intestate in respect thereof immediately after his daughter's death

(c) Where of two or more heirs of the intestate, no one is entitled to be preferred to any other under the provisions of this section, they shall take together, a son, daughter's son or son's son taking half as much only as his sister

14 *Stirpital succession to stridhana in certain cases*—If the stridhana of a woman devolves on two or more of the following relatives namely, daughters' sons and daughters or sons' sons and * daughters, they shall take it *per stirpes* and not *per capita*

Illustration

The surviving relatives of a woman are four grand daughters by one daughter A, and three grand daughters by another daughter B. Each of A's daughters takes 1/8th of the property and each of B's daughters takes 1/6th

General Provisions

15 *Full blood preferred to half blood*—Heirs related to an intestate by the full blood shall be preferred to heirs related by the half blood, if the nature of the relationship is the same in every other respect

Illustrations

(i) A brother by the full blood is preferred to a brother by the half blood, but a brother by the half blood succeeds before a brother's son by the full blood, a brother being a nearer heir than a brother's son

(ii) A paternal uncle by the half blood is preferred to a paternal uncle's son by the full blood an uncle being a nearer heir than an uncle's son.

(iii) A full brother's daughter's daughter is preferred to a half brother's daughter's daughter but the former is not preferred to a half brother's daughter's son as the nature of the relationship is not the same in the two cases. The latter, who is a nearer heir by virtue of Rule 3 in section 9 is preferred though he is only of the half blood.

16 *Right of child in womb*—A person who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate

17. *Rights of surviving spouse and descendants of a valid marriage*—The surviving spouse and descendants of a valid marriage contracted by a male or female Hindu outside his or her caste shall, for all the purposes of this Act, be treated in like manner as the surviving spouse and descendants of a valid marriage contracted within his or her own caste

18 *Disqualification of widow who was unchaste during husband's lifetime*—If an intestate's widow has been unchaste during his lifetime and after her marriage she shall, unless the unchastity has been condoned by her husband be disqualified from succeeding to his heritable property, and it shall devolve on his other heirs as it would in her absence

Provided that the right of a widow to inherit to her husband shall not be questioned on the ground aforesaid, unless—

* * * * *

a Court of Law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the Court not having been subsequently reversed

18 *Murderer disqualified*—A person who commits murder or abets the commission of murder in India or of a murder or a person to any property shall be disqualified for inheriting such property and the inheritance shall, in such a case, pass to the person next in the order of succession.

20 *Mental defect etc. disqualified*—No person shall be disqualified on account of any property in the event of any disease, defect or infirmity or any other ground whatsoever.

21 *Mode of succession of two or more heirs*—If two or more heirs succeed together to the property of any testate, they shall take the property—

(a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and

(b) as tenants in common and not as joint tenants.

22 *Escheat*—If the intestate has left no heir, or no heir qualified to succeed to his or her heritable property, such property shall go to the Crown.

23 *Repeals*—The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

THE SCHEDULE

(See section 23)

Year	No.	Short title	Extent of repeal
1	2	3	4
1929	XII	The Hindu Inheritance (Removal of Disabilities) Act, 1929	The whole
1929	II	The Hindu Law of Inheritance (Amendment) Act 1929	The whole
1937	XVIII	The Hindu Women's Rights to Property Act, 1937	Section 3 sub-section (1)

MD RAUF

Secy to the Govt of India

GOVERNMENT OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Select Committee on the Bill further to amend the Code of Criminal Procedure 1898 was presented to the Legislative Assembly on the 8th November, 1943—

We the undersigned members of the Select Committee to which the Bill further to amend the Code of Criminal Procedure 1898 was referred have considered the Bill and have now the honour to submit thus our Report with the Bill as amended by us annexed thereto.

2 We have made only one small change in the Bill the omission from the proposed sub section (2) which is to be substituted for sub section (2) of section 503 of the Code of Criminal Procedure of the words 'of the Central Government'. The words are unnecessary and it is conceivable that the officer exercising the powers of a District Magistrate in a Tribal Area might not be an officer of the Central Government.

3 The Bill was published in the Gazette of India dated the 31st July, 1943.

4 We think that the Bill has not been so altered as to require republication and we recommend that it be passed as now amended

ASOKA K ROY
G H SPENCE
MOHD AZHAR ALI
H A S H ESSAK
N SIVA RAJ
GHULAM BHIK NAIRANG
LALCHAND NAVALRAI
P J GRIFFITHS

The 6th November 1943

L A BILL No 25 OF 1943

AS AMENDED BY THE SELECT COMMITTEE]

(Omissions are indicated by asterisks)

A Bill further to amend the Code of Criminal Procedure 1898

WHEREAS it is expedient further to amend the Code of Criminal Procedure 1898 (V of 1898), for the purposes hereinafter appearing,

It is hereby enacted as follows —

1 *Short title* — This Act may be called the Code of Criminal Procedure (Amendment) Act, 1943

2 *Amendment of section 503, Act V of 1898* — In section 503 of the Code of Criminal Procedure, 1898 (V of 1898) (hereinafter referred to as the said Code),—

(a) for sub section (2), the following sub section shall be substituted, namely —

“(2) When the witness resides in an Indian State the commission may be issued to the officer, who is, for the time being the Political Agent for such State, and when the witness resides in a Tribal Area, the commission may be issued to the officer** exercising the powers of a District Magistrate in or in relation to, such area”,

(b) for sub section (4), the following sub section shall be substituted, namely —

“(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may, in lieu of proceeding in the manner laid down in sub section (3),—

(a) delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India, or

(b) where the commission is for the examination of a witness residing in an Indian State, forward — — — — — sed by the Crown Representative to which commissions may be i limits of whose jurisdiction the witness resides

3 *Amendment of section 505, Act V of 1898* — In section 505 of the said Code,—

(a) in sub section (1),—

(i) for the words “and the Magistrate”, the following shall be substituted, namely —

“and, except in a case to which clause (b) of sub section (4) of section 503 applies, the Magistrate”,

(a) after the words "such interrogatories" the following sentence shall be added, namely—

"In a case to which clause (1) of sub section (4) of section 503 applies, the officer to whom the commission is issued shall forward such interrogatories to the Court to which he forwards the commission for execution".

(b) in sub section (2), for the word "officer" the following shall be substituted namely—

"except in a case to which clause (1) of sub section (4) of section 503 applies, before such officer".

4. *Amendment of section 507, Act 1 of 1898*—In sub section (1) of section 507 of the said Code, after the words "duly executed", the following shall be inserted, namely—

"or, in a case to which clause (1) of sub section (4) of section 503 applies, has been again received by the officer by whom it was forwarded to the State Court".

MD RAIL

Secy to the Govt of India.

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Report of the Select Committee on the Bill to make certain provision for appeals in criminal cases tried by a High Court exercising original criminal jurisdiction was presented to the Legislative Assembly on the 8th November 1913—

We the undersigned members of the Select Committee to which the Bill Papers Nos I—IV to make certain provision for appeals in criminal cases tried by a High Court exercising original criminal jurisdiction was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit thus our Report, with the Bill as amended by us annexed thereto

Clause 2—In clause (b) of sub section (1) of the proposed new section 411A we have omitted the words "or judges" since the trials referred to are invariably held before a single judge

We have inserted a new sub section (2) to make the provision for appeals against acquittals which was made in the Bill as introduced by the amendment proposed in clause 5 to section 417 of the Code. This new sub section has the effect, which the mere amendment of section 417 had not of exactly stating the right of appeal against acquittals with the right given under clauses (b) and (c) of sub section (1) of section 411A of appeal against a conviction

We have inserted in sub section (3) the words which shall take action impose on the Provincial Government a definite duty to arrange for a transfer to another High Court in the circumstances there dealt with

The alteration made in sub section (4) has the effect of confining appeals to the Privy Council to appeals against orders made on appeal against conviction only instead of allowing them also from orders made on appeal against acquittal

Clause 4—The alteration here made is to make applicable to appeals from High Court exercising original criminal jurisdiction the same restriction as imposed by section 411 of the Code on appeals from a Presidency Magistrate

Clause 5—The original clause 5 is omitted since the effect intended to be produced by it has been produced more effectively by our insertion of the new sub section (2) in section 411A in clause 2 of the Bill. In place of the original clause 5 we have inserted a clause making in sections 422 423, 427 and 431 of the Code the consequential amendments necessitated by the insertion of the new sub section

Clause 8.—Thus clause 1 has been added to make clear that Article 10 of the First Schedule to the Indian Limitation Act 1908 which speaks only of Court of Session applies to sentences of death passed by a High Court in the exercise of its original criminal jurisdiction.

2 The Bill was published as follows —

IN ENGLISH

<i>Gazette</i>	<i>Date</i>
Gazette of India	13th February 1943
Fort St. George Gazette	11th May, 1943
Bombay Government Gazette	28th April, 1943
Calcutta Gazette	11th March, 1943
United Provinces Government Gazette	4th September, 1943.
Punjab Government Gazette	30th April and 7th and 14th May, 1943
Central Provinces and Berar Gazette	23rd April, 1943
Assam Gazette	5th May, 1943
Bihar Gazette	27th April, 1943
Orissa Gazette	12th March, 1943
Coorg Gazette	1st May, 1943.
Sind Government Gazette	29th April, 1943
North West Frontier Province Government Gazette	7th May 1943.

IN THE INDIAN LANGUAGES

<i>Province</i>	<i>Language</i>	<i>Date</i>
Madras	Tamil	18th May, 1943.
	Telugu	
	Hindustani	
	Kanarese	
	Malayalam	
Sind	Sindhi	6th May, 1943

3. We think that the Bill has not been so altered as to require republishing and we recommend that it be passed as now amended.

ASOKA K. ROY

G. H. SPENCE

N. SIVA RAJ

MOHD YAMIN KHAN

LALCHAND NAVALRAI

P. J. GRIFFITHS

The 5th November, 1943

THE BILL NO. 1 OF 1943

[AS AMENDED BY THE SELECT COMMITTEE]

(Changes made by the Committee are indicated by underlining or in the case of omissions by asterisks)

A Bill to make certain provision for appeals in criminal cases tried by a High Court exercising original criminal jurisdiction.

WHEREAS it is expedient to make certain provision for appeals in criminal cases tried by a High Court exercising original criminal jurisdiction,

It is hereby enacted as follows —

1 Short title.—This Act may be called the Criminal Procedure Amendment Act 1913

2 Insertion of new section 411A in Act V of 1898 —After section 411 of the Code of Criminal Procedure 1898 (V of 1898) (hereinafter referred to as the said Code), the following section shall be inserted, namely:—

411A Appeal from sentence of High Court —(1) Without prejudice to the provisions of section 410 any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 414 or section 421, sub-section (2), or in the Letters Patent of any High Court, appeal to the High Court—

(a) against the conviction on any ground of appeal which involves a matter of law only,

(b) with the leave of the appellate Court or upon the certificate of the Judge who tried the case that it is a fit case for appeal against conviction on any ground of appeal which involves a matter of fact only, a matter of mixed law and fact, or any other ground which appears to the appellate Court to be a sufficient ground of appeal, and

(c) with the leave of the appellate Court against the sentence passed unless the sentence is one fixed by law

(2) Notwithstanding anything contained in section 117, the Provincial Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction and such appeal may notwithstanding anything contained in section 118 or section 123 sub-section (2) or in the Letters Patent of any High Court but subject to the restrictions imposed by clause (b) and clause (c) of sub-section (1) of this section on an appeal against conviction lie on a matter of fact as well as a matter of law

(3) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges being judges other than the Judge or judges by whom the original trial was held and if the constitution of such a Division Court is impracticable the High Court shall report the circumstances to the Provincial Government which shall take action with a view to the transfer of the appeal under section 527 to another High Court

(4) Subject to such rules as may from time to time be made by His Majesty in Council in this behalf and to such conditions as the High Court may establish or require an appeal shall lie to His Majesty in Council from any order made on appeal under sub-section (1) by a Division Court of the High Court in respect of which order the High Court declares that the matter is fit one for such appeal

3 Amendment of section 412, Act V of 1898 —In section 412 of the said Code after the word by the words a High Court, shall be inserted

4 Amendment of section 413, Act V of 1898 —In section 413 of the said Code after the words which where they occur for the first time the words a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which shall be inserted

* * * * *

5 Amendment of sections 422 423 427 and 431, Act V of 1898 —In sections 422 423 427 and 431 of the said Code for the word and figures section 17 the words figures brackets and letter section 411A sub-section (2), "section 417" shall be substituted

6 Omission of section 434, Act V of 1898.—Section 434 of the said Code shall be omitted

7. Amendments of Letters Patent of High Courts and certain Acts—
(2) Clauses 25, 26 and 41 of the Letters Patent for the High Courts at Bombay, at Madras and at Fort William in Bengal, clauses 18, 19 and 32 of the Letters Patent for the High Court at Allahabad, clauses 18, 19 and 31 of the Letters Patent for the High Courts at Lahore and at Nagpur, and clauses 18, 19 and 33 of the Letters Patent for the High Court at Patna shall cease to have effect

(2) In the Oudh Courts Act 1925 (U P Act IV of 1925) —

(a) to sub section (1) of section 14 the following proviso shall be added namely —

‘Provided that nothing in this sub section shall apply to a judge or a Bench of Judges exercising original criminal jurisdiction’;

(b) section 15 shall be omitted

(3) In the Sindh Courts Act 1926 (Bom Act VII of 1926) —

(a) to section 12 the following proviso shall be added namely —

‘Provided that nothing in this section shall apply to a judge of the Chief Court exercising the jurisdiction of the Chief Court as the principal criminal Court of original jurisdiction for the sessions division of Karachi’;

(b) section 13 shall be omitted.

8 Amendment of First Schedule, Act XI of 1908 —In the First Schedule to the Indian Limitation Act, 1908 (XI of 1908) in article 150, to the entry in the first column, the words “or by a High Court in the exercise of its original criminal jurisdiction” shall be added

The following Bill* was introduced in the Legislative Assembly on the 8th November, 1943 —

L A BILL No 35 of 1943

A Bill further to amend the Indian Tea Control Act, 1938

WHEREAS it is expedient further to amend the Indian Tea Control Act, 1938 (VIII of 1938), for the purposes hereinafter appearing —

It is hereby enacted as follows —

1 Short title —This Act may be called the Indian Tea Control (Second Amendment) Act, 1943

2 Amendment of section 11, Act VIII of 1938 —In section 11 of the Indian Tea Control Act 1938 (VIII of 1938) (hereinafter referred to as the said Act) for clause (d) the following clause shall be substituted, namely —

‘(d) exported with the previous sanction of the Central Government, within the limits prescribed in this behalf by a Red Cross Society or by any organisation for providing amenities for troops overseas’

3. Amendment of section 17, Act VIII of 1938 —In section 17 of the said Act in sub section (5) after the words ‘the Committee may’ the words “with the general or special previous sanction of the Central Government refuse to issue a special export licence or” shall be inserted.

4 Amendment of section 29, Act VIII of 1938 —In sub section (1) of section 29 of the said Act, for the words and figures “Where any

*The previous consent necessary under sub-section (1) of section 103 of the Government of India Act, 1935, for the enactment of the provisions of clause 4 of this Bill has been given by the Governors of the Provinces concerned.

land which was on the 31st day of March, 1917, planted with tea, the following shall be a valid title thereto—

"Where any land which was at the 31st day of March, 1933, planted with tea (including land planted with tea at the 31st day of March, 1931, from which the original title has been acquired) and which had not been replanted with tea at the said 31st day of March, 1933, or was any land planted with tea after the 31st day of March, 1933—".

5. Amendment of section 33, Act VIII of 1933.—In section 33 of the said Act, after the words "A breach of the provisions of" the words, brackets and figures "sub-section (4) of section 12 or" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

Certain defects in the wording of the Indian Tea Control Act, 1933, as amended by the Indian Tea Control (Amendment) Act, 1943, have come to light during the application of the amended Act. Sub-section (1) of section 29 of the Act as it now stands requires that in order to qualify for the benefits contemplated by that sub-section, the land in question should have been planted with tea on the 31st March, 1917, whereas the intention was that the benefit should extend to all tea areas in existence on the 31st March, 1933 or planted thereafter. It is proposed to amend sub-section (1) of section 29 to give effect to the original intention. The consent of the Governors of all Provinces has been obtained to the proposed amendment of sub-section (1) of section 29, as this relates to the provincial subject of Agriculture.

2. Advantage is also being taken of this occasion to amend clause (d) of section 11 of the Act to exempt from the requirements of export licences, small gift parcels of tea sent for troops overseas under the auspices of the Directorate of Welfare and Amenities and also to provide for powers by which the Central Government can authorise the Indian Tea Licensing Committee to refuse the grant of special export licences by amending sub-section (5) of section 17.

M. AZIZ UL HUQUE

NEW DELHI,

The 1st November, 1943

The following Bill was introduced in the Legislative Assembly on the 8th November, 1943—

L. A. Bill No. 36 OF 1943

A Bill further to amend the Code of Criminal Procedure 1898

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898 (V of 1898), for the purposes hereinafter appearing,

It is hereby enacted as follows—

1. **Short title.**—This Act may be called the Code of Criminal Procedure (Second Amendment) Act 1943.

2. **Amendment of section 198, Act V of 1898.**—To section 198 of the Code of Criminal Procedure, 1898 (V of 1898) (hereinafter referred to as the said Code), the following further proviso shall be added, namely—

"Provided further that where the husband aggrieved by an offence under section 494 of the said Code is serving in any of His Majesty's armed forces under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint

person some other person authorised by the husband in accordance with the provisions of sub section (1) of section 199B may with the leave of the Court, make a complaint on his behalf

3 Amendment of section 199, Act V of 1898—To section 199 of the said Code the following further proviso shall be added namely—

‘Provided further that where such husband is serving in any of His Majesty’s armed forces under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person and where for any reason no complaint has been made by a person having care of the woman as aforesaid some other person authorised by the husband in accordance with the provisions of sub section (1) of section 199B may with the leave of the Court make a complaint on his behalf’

4 Insertion of new section 199B in Act V of 1898—After section 199A of the said Code the following section shall be inserted in Chapter XV namely—

199B Form of authorisation under second proviso to section 198 or 199—
(1) The authorisation of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing shall be signed or otherwise attested by the husband shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded shall be countersigned by the Officer referred to in the said provisos and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband

(2) Any document purporting to be such an authorisation and complying with the provisions of sub section (1) and any document purporting to be a certificate required by that sub section shall unless the contrary is proved be presumed to be genuine and shall be received in evidence

STATEMENT OF OBJECTS AND REASONS

Section 198 of the Code of Criminal Procedure 1898 requires that complaints in respect of *inter alia* the offence of bigamy (section 494 of the Indian Penal Code) shall be made by some person aggrieved and section 199 that complaints in respect of adultery and enticement of a married woman (sections 497 and 498 of the Indian Penal Code) shall be made by the husband or in his absence and with the leave of the Court by some person who had care of such woman on his behalf. This latter person however may not invariably have an interest in the matter identical with the husband’s. Both sections have provisos dealing with certain exceptional cases but neither of them meets the case of the member of His Majesty’s armed forces serving under conditions where it is impossible for the time being to grant him leave to attend to his domestic affairs in person. It is proposed therefore to relax the provisions of section 199 (and of section 198 also so far as that section relates to the offence of bigamy) to permit a husband serving under such conditions to authorise some other person to make with the leave of the Court a complaint on his behalf after he has been acquainted with the alleged circumstances.

The Bill seeks to add further provisos to sections 198 and 199 for this purpose and a new section 199B which on the one hand lays down as a measure of precaution against abuse certain requirements as to the form of authorisation and on the other hand provides that when these requirements have been complied with the authorisation shall in the absence of proof to the contrary be acceptable as genuine by the Courts.

A K ROY

NEW DELHI

The 5th November 1913

The following Bill was introduced in the Legislative Assembly on the 8th November, 1943 —

L. A. BILL No. 37 of 1943

A Bill further to amend the Victoria Memorial Act, 1903

WHEREAS it is expedient further to amend the Victoria Memorial Act, 1903 (X of 1903), for the purposes hereinafter appearing,

It is hereby enacted as follows:—

1. **Short title.**—This Act may be called the Victoria Memorial (Amendment) Act, 1943.

2. **Amendment of section 2, Act X of 1903.**—For sub section (3) of section 2 of the Victoria Memorial Act, 1903 (X of 1903) (hereinafter referred to as the said Act), the following sub section shall be substituted and shall be deemed always to have been substituted, namely:—

“(3) All acts done by a majority of those present and voting at a meeting of the Trustees, and all acts done in pursuance of a majority decision of the Trustees obtained by circulation to the Trustees of the matter requiring decision, shall be deemed to be acts of the Trustees.”

3. **Amendment of section 5, Act X of 1903.**—After clause (b) of sub section (2) of section 5 of the said Act, the following clause shall be inserted, namely:—

“(bb) for the manner in which a majority decision of the Trustees shall be obtained by circulation to the Trustees of the matter requiring decision”

STATEMENT OF OBJECTS AND REASONS

The Victoria Memorial Act, 1903 does not contemplate or authorize the procedure, which has been ordinarily followed by the Trustees of the Victoria Memorial, of acting on decisions arrived at by circulating to the Trustees a matter requiring decision and obtaining a majority decision without holding a formal meeting of the Trustees. This procedure is considered desirable, since it is impracticable for the Governor General of India and other Trustees residing outside Bengal to attend, except occasionally, meetings of the Trustees, while at the same time their inclusion among the Trustees is considered essential to preserve representation for the whole of India in the administration of the Memorial. The present Bill amends the Act to authorize this procedure in future, and to validate action taken in this manner in the past.

R. M. MAXWELL

New Delhi,

The 30th October, 1943

The following Bill* was introduced in the Legislative Assembly on the 8th November, 1943 —

L. A. BILL No. 38 of 1943

A Bill further to amend the Indian Trade Unions Act, 1926

WHEREAS it is expedient further to amend the Indian Trade Unions Act, 1926 (XVI of 1926), for the purposes hereinafter appearing

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Indian Trade Unions (Amendment) Act, 1943.

*The Governor General has been pleased to give the sanction required by sub-section (2) of section 126 of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

(2) It shall come into force on such date as the Central Government may by notification in the official Gazette appoint

2 Amendment of the long title of Act XVI of 1926—In the long title of the Indian Trade Unions Act 1926 (XVI of 1926) (hereinafter referred to as the said Act) after the word *registration* the words *and recognition* shall be inserted and after the word *registered* the words *and recognised* shall be inserted

3 Amendment of the preamble to Act XVI of 1926—In the preamble to the said Act after the word *registration* the words *and recognition* shall be inserted and after the word *registered* the words *and recognised* shall be inserted

4 Amendment of section 2, Act XVI of 1926—In section 2 of the said Act—

(a) after the words *the appropriate Government* means the words *figure and letter* subject to the provisions of section 28A shall be inserted

(b) clause (a) shall be relettered *clause (ai)* and before clause (aa) as so relettered the following clause shall be inserted namely—

(a) *Board* means in relation to a Trade Union a Board of Recognition appointed by the appropriate Government under sub section (1) of section 28B

(c) after clause (c) the following clause shall be inserted namely—

(cc) *Recognised Trade Union* means a Trade Union recognised under this Act

5 Insertion of new Chapter IIIA in Act XVI of 1926—After Chapter III of the said Act the following Chapter shall be inserted namely—

CHAPTER IIIA

Recognition of Trade Unions and Rights and Liabilities of recognised Trade Unions

28A Modification of the definition of the appropriate Government for certain purposes—Notwithstanding anything to the contrary in the definition of the appropriate Government in section 2 the Central Government shall be deemed to be the appropriate Government for the purposes of this Chapter in respect of Trade Unions consisting of workmen employed by the Central Government or by a Federal Railway or in a major port

Explanation—In this section and for the purposes of this Chapter a Trade Union of which not less than seventy per cent of the members are workmen employed by the Central Government or by a Federal Railway or in a major port shall be deemed to be a Trade Union consisting of workmen employed by the Central Government or by a Federal Railway or in a major port respectively

28B Appointment and constitution of Boards of Recognition—(1) The appropriate Government may appoint a Board of Recognition consisting of one representative of such Government one representative of employers and one representative of workmen

(2) The procedure for the selection of the representatives referred to in sub section (1) shall be such as may be prescribed

(3) The business of and before Boards appointed under sub section (1) shall be regulated and conducted in such manner as may be prescribed

28C Application for recognition—(1) The executive of a Trade Union may make an application for the recognition of the Trade Union under this Act to the Board or if no Board has been appointed to the Registrar

(2) Every application under sub section (1) shall be accompanied by a statement furnishing the prescribed particulars

28D Conditions for recognition—(1) A Trade Union shall not be entitled to recognition under this Act unless it fulfils the following conditions namely—

(a) that all its members are workmen employed in one and the same industry

(b) that it is and has been for at least twelve months prior to the date of the application for recognition a registered Trade Union and that it has complied with all the provisions of this Act,

(c) that its rules do not provide for the exclusion of members on communal or religious grounds,

(d) that its executive meets at least once a quarter,

(e) that it is a representative Trade Union,

(f) that it has applied for recognition to the employer not less than three months prior to the date of the application to the Board or the Registrar for recognition,

(g) any further conditions that may be prescribed

(2) No Trade Union shall be deemed to be a representative Trade Union for the purposes of clause (c) of sub-section (1) unless it satisfies such conditions as may be prescribed

28E Power of Registrar and the Board—(1) The Board or the Registrar as the case may be may call for further information for the purpose of ascertaining whether the Trade Union concerned is entitled to recognition under section 28D and if a Trade Union fails to supply the required information within the prescribed period, its application for recognition shall be deemed to have been withdrawn

(2) The Board or the Registrar as the case may be shall investigate whether the Trade Union fulfils the conditions laid down in section 28D for recognition and shall forward the application to the appropriate Government with a report and a recommendation regarding the grant or withholding of recognition

28F Grant and withdrawal of recognition—(1) On receipt of the application for recognition and the report referred to in sub-section (2) of section 28E the appropriate Government if satisfied that the Trade Union is fit to be recognised may by notification in the official Gazette declare the Trade Union to be a recognised Trade Union

(2) Recognition granted to a Trade Union under sub-section (1) shall be withdrawn by the appropriate Government by notification in the official Gazette if such Government is satisfied that—

(a) a member or members of the Trade Union has or have taken part in an illegal strike or

(b) members of the executive have advised or actively supported an illegal strike or any propaganda directed against the efficient prosecution of war

(3) If after considering a report from the Board or Registrar the appropriate Government is satisfied that a Trade Union has ceased to be representative or has become unfit for recognition for any reason other than a reason specified in sub-section (2) such Government may in its discretion by notification in the official Gazette withdraw the recognition previously granted to the Trade Union under sub-section (1)

(4) No notification withdrawing recognition from a Trade Union shall be issued under sub-section (2) or sub-section (3) unless the Trade Union concerned has been given a reasonable opportunity of showing cause against the withdrawal

28G Rights of a recognised Trade Union—(1) The executive of a recognised Trade Union shall be entitled to negotiate with the employer in respect of matters affecting the common interests of the members of the Trade Union and the employer shall receive and send replies to letters sent by the executive and grant interviews to that body regarding matters affecting the interests of the members of the Union

(2) Nothing in this section shall be construed as requiring an employer to send replies to letters on or grant interviews regarding matters on which as a result of previous discussion with the Union or the members thereof the employer has arrived at a conclusion whether in agreement with the executive or not

(3) Any dispute between the employer and the executive as to whether a conclusion has been arrived at within the meaning of sub section (2) shall be referred to the Registrar whose decision shall be final

28H Returns—Every recognised Trade Union shall submit to the Registrar at the prescribed time and in the prescribed manner, such returns, in addition to those referred to in section 28, as may be prescribed

28I Power of Central Government to give directions—The Central Government may give directions to a Provincial Government as to the regulations to be made in exercise of the power conferred by sub section (2) of section 29B or clause (g) of sub section (1) or sub section (2) of section 28D

28J The provisions of this Chapter shall not until the termination of the hostilities in being at the commencement of the Indian Trade Unions (Amendment) Act 1943 apply to any Trade Union consisting of workmen employed by or under the Crown or by a Federal Railway or in a major port, unless the Central Government by notification in the official Gazette so directs in the case of any specified Trade Union "

6. Amendment of section 31, Act XVI of 1926—To section 31 of the said Act the following sub section shall be added namely —

(1) The provisions of sub section (1) and sub section (2) shall apply also to defaults in submitting and to false entries in and omissions from any return required to be submitted under section 28H

7. Insertion of new section 32A in Act XVI of 1926—After section 32 of the said Act, the following section shall be inserted, namely —

32A Failure by employer to comply with section 28G(1)—Any employer who fails to comply with the provisions of sub section (1) of section 28G shall be punishable with fine which may extend to five hundred rupees

STATEMENT OF OBJECTS AND REASONS

Trade disputes often occur or are prolonged because an employer refuses to recognise a trade union of his workmen

The Royal Commission on Labour considered the question of the recognition of trade unions and gave the reasons for which employers were not inclined to recognise unions. These were that the union embraced only a minority of workers that another union was already in existence that the union had refused to dispense with the services of a particular official, that outsiders had been included in the executive or that the union had failed to register under the Trade Unions Act. The Commission discussed these reasons and showed why all except the last were invalid. Deprecating obligatory recognition it pleaded for recognition in the spirit as well as in the letter and expressed the view that "recognition may mean much but it may mean nothing. No law can secure that genuine and full recognition which we desire to see."

The position has not much improved since the Royal Commission completed its report and it is felt that the time has now come when the compulsory recognition of trade unions must be provided for by legislation. With all its limitations recognition by statute will at least clarify the position and give organised and well conducted trade unions the status they deserve. It may achieve much more.

The present Bill provides for the compulsory recognition of trade unions under certain conditions and defines what recognition will imply. Power is taken to set up tripartite Boards of Recognition which will report on the representativeness of trade unions and their fitness to be recognised. The main conditions of recognition will be that the trade union must have been a registered union for 12 months and that it must have previously applied to the employer concerned for recognition. Unions formed on a communal or sectarian basis will not be eligible for recognition. Besides laying down the basic conditions

required for recognition. The Bill allows for additional conditions to be imposed by the appropriate Government and power is given to the Central Government to give directions to Provincial Governments in this matter.

Recognition will be granted or will be given by the appropriate Government after receiving a report from the Board of Recognition where one is appointed, or in other cases from the Registrar. Recognition will entitle a union to negotiate with the employer in respect of matters affecting the common interests of its members. The Bill also states the obligations of employers consequent on recognition.

B. P. AMBEDKAR

NEW DELHI

The 25th October, 1913

The following Bill was introduced in the Legislative Assembly on the 8th November 1913 —

L. A. Bill No. 34 of 1913

A Bill further to amend the Indian Companies Act 1913

WHEREAS it is expedient further to amend the Indian Companies Act 1913 (VII of 1913) for the purposes hereinafter appearing

It is hereby enacted as follows —

1 Short title — This Act may be called the Indian Companies (Amendment) Act 1913

2 Amendment of section 132, Act VII of 1913 — In sub section (1) of section 132 of the Indian Companies Act 1913 (VII of 1913) (hereinafter referred to as the said Act) after the word company, the following shall be inserted and shall be deemed always to have been inserted, namely —

in accordance with the requirements indicated by the items contained in the form marked I in the Third Schedule

3 Amendment of section 151, Act VII of 1913 — In sub section (3) of section 151 of the said Act for the words Any such table or form when altered shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act the following shall be substituted and shall be deemed always to have been substituted namely —

Any alteration or addition made under sub section (1) shall be published in the official Gazette and on such publication the table or form as so altered or the added form as the case may be shall have effect as if enacted in this Act

4 Amendment of First Schedule, Act VII of 1913 — In Table A in the First Schedule to the said Act in Regulation 107 after the words the amount of gross income the brackets and words (diminished in the case of a banking company by the amount of any provision made to the satisfaction of the auditors for bad and doubtful debts) shall be inserted and shall be deemed always to have been inserted

5 Amendment of Third Schedule, Act VII of 1913 — In the form marked F in the Third Schedule to the said Act the following substitutions shall be made and shall be deemed always to have been made namely —

(a) in the column headed CAPITAL AND LIABILITIES for the sub head PROVISION FOR BAD AND DOUBTFUL DEBTS the following sub head shall be substituted namely —

PROVISION FOR BAD AND DOUBTFUL DEBTS (IN THE CASE OF COMPANIES OTHER THAN BANKING COMPANIES)

(b) in the column headed PROPERTY AND ASSETS for the sub head BOOK DEBTS the following sub head shall be substituted namely —

BOOK DEBTS (OTHER THAN BAD AND DOUBTFUL DEBTS OF A BANKING COMPANY FOR WHICH PROVISION HAS BEEN MADE TO THE SATISFACTION OF THE AUDITORS)

STATEMENT OF OBJECTS AND REASONS

Following the recognised practice of banking companies in India and the United Kingdom such companies were by a notification issued in 1927 under section 151 of the Indian Companies Act 1913 relieved from the obligation to disclose in Form F in the Third Schedule to the Act those bad and doubtful debts for which adequate provision had been made in their accounts to the satisfaction of the auditors. When the Indian Companies (Amendment) Act, 1936 was brought into force in January 1937 a similar notification was issued on the 16th January 1937.

2 In a recent judgment the Bombay High Court has held that the notification of the 16th January 1937 issued under section 151 of the Indian Companies Act 1913 is *ultra vires* in so far as it seeks to distinguish banks from other companies. The amendments to the Act sought to be made by the amending Bill are designed to meet the objections pointed out by the Bombay High Court and to legalise the long standing practice followed by the banks.

M AZIZ UL HUQUE

NEW DELHI

The 29th October 1943

MD RAFI

Secretary to the Government of India

The Gazette of India



PUBLISHED BY AUTHORITY

NEW DELHI, SATURDAY, NOVEMBER 20, 1943

Separate pages to give to the Part in order that it may be filed as a separate compilation.

PART V

Introduced in the Council of State and Legislative Assembly. Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 12th November 1943 —

L. A. BILL No 40 of 1943

A Bill to consolidate and amend the law relating to central duties of excise

WHEREAS it is expedient to consolidate and amend the law relating to central duties of excise on goods manufactured or produced in British India, It is hereby enacted as follows —

CHAPTER I

1. Short title, extent and commencement — (1) This Act may be called the Central Excise Act, 1943.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

2. Definitions. — In this Act, unless there is anything repugnant in the subject or context, —

(a) 'broker' or 'commission agent' means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods or others,

(b) 'Central Excise Officer' means any officer of the Central Excise Department, or any person invested by the Central Board of Revenue with any of the powers of a Central Excise Officer under this Act.

(c) 'curing' includes wilting, drying, fermenting and any process for rendering tobacco fit for marketing or manufacture.

(d) 'excisable goods' means goods specified in the First Schedule as being subject to a duty of excise.

(e) 'factory' means any premises including the precincts thereof wherein or in any part of which excisable goods are manufactured or wherein or in any part of such any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.

*The Governor General has been pleased to — the previous sanction required by this Act as saved from repeal by and Transitory Provisions Order, Government of India Act, 1935.

(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product, and

(i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, buns, cigarette or pipe or hookah tobacco, chewing tobacco or snuff, and

(ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account if those goods are intended for sale,

(g) "prescribed" means prescribed by rules made under this Act,

(h) 'sale' and 'purchase', with their grammatical variations and cognate expressions mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration,

(i) "saltpetre" includes *rasi*, *saji*, and all other substances manufactured from saline earth, and *kharinun* and every form of sulphate or carbonate of soda

(j) 'salt work' includes—

(i) a place used or intended to be used in the manufacture of salt and all embankments, reservoirs, condensing and evaporating pans, buildings and waste places situated within the limits of such place,

(ii) all drying grounds and storage platforms and storehouses appertaining to any such place

(iii) land on which salt is spontaneously produced, and a 'private salt work' is one not solely owned or not solely worked by the Central Government

(k) 'wholesale dealer' means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture and includes a broker or commission agent who in addition to making contracts for the sale or purchase of excisable goods for others stocks such goods belonging to others as an agent for the purpose of sale

CHAPTER II

LEVY AND COLLECTION OF DUTY

3 Duties specified in the First Schedule to be levied—(1) There shall be levied and collected in such manner as may be prescribed duties of excise as, and at the rates set forth in the First Schedule on all excisable goods which are produced or manufactured in British India,

(2) The Central Government may, by notification in the official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings in the First Schedule as chargeable with duty *ad valorem*, and may alter any tariff values for the time being in force,

(3) Different tariff values may be fixed for different classes or descriptions of the same article

4 Determination of value for the purposes of duty—Where under this Act any article is chargeable with duty at a rate dependent on the value of the article such value shall be deemed to be the wholesale cash price for which an article of the like kind and quality is sold or is capable of being sold for delivery at the place of manufacture and at the time of its removal therefrom without any abatement or deduction whatever except trade discount and the amount of duty then payable

5 Power of Central Government to impose Customs duty on goods mentioned in the First Schedule—The Central Government may by notification in the official Gazette impose on any excisable goods brought into British India from the territory of any Indian State not being territory which has been declared under section 5 of the Indian Tariff Act 1934 (XXVII of 1934) to be foreign territory for the purposes of that section a duty of customs equivalent to the duty of excise imposed by this Act on the like goods produced or manufactured in British India.

6 Certain operations to be subject to licence—The Central Government may by notification in the official Gazette provide that from such date as may be specified in the notification no person shall engage in the production or manufacture or in any process of the production or manufacture of any specified excisable goods or of saltpetre or of any specified component parts or ingredients thereof or of specified containers of such goods or in the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or in the storage of such good except under the authority and in accordance with the terms and conditions of a licence granted under this Act.

7 Form and conditions of licence—Every licence under section 6 shall be granted for such area if any for such period subject to such restrictions and conditions and in such form and containing such particulars as may be prescribed.

8 Restriction on possession of excisable goods—From such date as may be specified in this behalf by the Central Government by notification in the official Gazette no person shall except as provided by rules made under this Act have in his possession excisable goods in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.

9 Offences and Penalties—Whoever commits any of the following offences namely—

(a) contravenes any of the provisions of a notification issued under section 6 or of section 8 or of a rule made under clause (iii) of sub section (2) of section 37

(b) evades the payment of any duty payable under this Act

(c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief the burden of proving which shall be upon him that the information supplied by him is true) supplies false information,

(d) attempts to commit or abets the commission of any of the offences mentioned in clauses (a) and (b) of this section shall for every such offence be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

10 Power of Courts to order forfeiture—Any Court trying an offence under this Chapter may order the forfeiture to His Majesty of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed and may also order the forfeiture of any receptacles packages or covers in which such goods are contained and the animals vehicles vessels or other conveyances used in carrying the goods and any implements or machinery used in the manufacture of the goods.

11 Recovery of sums due to Government—In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder the officer empowered by the Central Board of Revenue to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may recover the amount by attachment and sale of excisable goods belonging to such person and if the amount

payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector on receipt of such certificate shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

12 Application of the provisions of Act VIII of 1878 to central excise duties—The Central Government may by notification in the official Gazette declare that any of the provisions of the Sea Customs Act 1878 relating to the levy of and exemption from customs duties drawback of duty warehousing offences and penalties confiscation and procedure relating to offences and appeals shall with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances be applicable in regard to like matters in respect of the duties imposed by section 3.

CHAPTER III

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS

13 Power to arrest—(1) Any Central Excise officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder who on demand of any officer duly empowered by the Central Government in this behalf refuses to give his name and residence or who gives a name or residence which such officer has reason to believe to be false may be arrested by such officer in order that his name and residence may be ascertained.

14 Power to summon persons to give evidence and produce documents in inquiries under this Act—(1) Any Central Excise officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend either in person or by an authorised agent as such officer may direct and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required.

Provided that the exemptions under sections 192 and 193 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 192 and section 228 of the Indian Penal Code.

15 Officers required to assist Central Excise Officers—All officers of Police and Customs and all officers of Government engaged in the collection of land revenue and all village officers are hereby empowered and required to assist the Central Excise officers in the execution of this Act.

16 Owners or occupiers of land to report manufacture of contraband excisable goods—Every owner or occupier of land and the agent of any such owner or occupier in charge of the management of that land if contraband excisable goods are manufactured thereon shall in the absence of reasonable excuse be bound to give notice of such manufacture to a Magistrate or to an officer of the Central Excise Customs Police or Land Revenue Department immediately the fact comes to his knowledge.

17 Punishment for connivance at offences—Any owner or occupier of land or any agent of such owner or occupier in charge of the management of that land who wilfully connives at any offence against the provisions of this Act or of any rules made thereunder shall for every such offence be punishable.

with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

18 Searches and arrests how to be made.—All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898) relating respectively to searches and arrests made under that Code.

19 Disposal of persons arrested.—Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise officer empowered to send persons so arrested to a Magistrate, or if there is no such Central Excise officer within a reasonable distance, to the officer in charge of the nearest police station.

20. Procedure to be followed by officer in-charge of police station.—The officer in charge of a police station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction or in default of bail forward him in custody to such Magistrate.

21 Inquiry how to be made by Central Excise officers against arrested persons forwarded to them under section 19.—(1) When any person is forwarded under section 19 to a Central Excise officer empowered to send persons so arrested to a Magistrate, the Central Excise officer shall proceed to enquire into the charge against him.

(2) For this purpose the Central Excise officer may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (V of 1898) when investigating a cognizable case.

Provided that—

(a) if the Central Excise officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person he shall forward him to a Magistrate having jurisdiction in the case,

(b) if it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person he shall release the accused person on his executing a bond, with or without sureties as the Central Excise officer may direct to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

22 Vexatious search, seizure, etc. by Central Excise officer.—Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who—

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place,

(b) vexatiously and unnecessarily detains searches or arrests any person

(c) vexatiously and unnecessarily seizes the moveable property of any person on pretence of seizing or searching for any article liable to confiscation under this Act,

(d) commits as such officer any other act to the injury of any person without having reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable with fine which may extend to five hundred rupees.

23 Failure of Central Excise officer in duty.—Any Central Excise officer who ceases or refuses to perform or withdraws himself from the duties of his office unless he has obtained the express written permission of the Collector of Central Excise or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse shall on conviction before a Magistrate be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

CHAPTER IV

TRANSPORT BY SEA

24. Penalties for carrying excisable goods in certain vessels.—When any excisable goods are carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

25. Exceptions.—Nothing in section 24 applies to—

(a) any excisable goods covered by a permit granted under rules made under this Act;

(b) any excisable goods covered by a pass granted by any officer whom the Central Board of Revenue may appoint in this behalf,

(c) such amount of excisable goods carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Central Board of Revenue may from time to time exempt from the operation of section 24.

26. Power of stoppage, search and arrest.—When any officer empowered by the Central Board of Revenue, to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any excisable goods are being carried or have within the previous twenty-four hours been carried in any vessel so as to render the owner or master of such vessel liable to the penalties imposed by section 24, he may require such vessel to be brought to and thereupon may—

(a) enter and search the vessel,

(b) require the master of the vessel to produce any documents in his possession relating to the vessel or the cargo thereof,

(c) seize the vessel if the officer has reason to believe it liable to confiscation under this Act and cause it to be brought with its crew and cargo into any port in British India, and

(d) where any excisable goods are found on board the vessel search and arrest without a warrant any person on board the vessel whom he has reason to believe to be punishable under section 24.

27. Penalties for resisting officer.—Any master of a vessel refusing or neglecting to bring to the vessel or to produce his papers when required to do so by an officer acting under section 26 and any person obstructing any such officer in the performance of his duty, may be arrested by such officer without a warrant, and shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

28. Confiscation of vessel and cargo.—(1) Every vessel (including all appurtenances) in which any excisable goods are carried so as to render the owner or master of such vessel liable to penalties imposed by section 24, the cargo on board such vessel and the excisable goods in respect of which an offence under this Act has been committed shall be liable to confiscation on the orders of the officer empowered in this behalf by the Central Government.

(2) Whenever any Customs officer is satisfied that any article is liable to confiscation under this section he may seize such article, and shall at once report the seizure to his superior officer for the information of the officer empowered to order confiscation under sub-section (1) and such officer may, if satisfied on such report or after making such inquiry as he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

29. Jurisdiction.—Any offence punishable under section 24 or section 27 may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 26 or section 27, he may be brought.

30. Power to exempt from operation of this Chapter.—The Central Government may, by notification in the official Gazette exempt the carriage of excisable goods within any local limits or in any class of vessels from the operation

of this Chapter, and, by like means, again subject such carriage to the operation of this Chapter.

CHAPTER V

SPECIAL PROVISIONS RELATING TO SALT

31. Special and permanent rights of manufacturing salt to be recognised.—The proprietor of a private salt work who has by virtue of a grant granted by the British or any former Government, a special and permanent right to manufacture salt or to excavate or collect natural salt, shall on application made in accordance with the rules made under this Act be entitled to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act, his licence has been cancelled by an officer duly empowered by the Central Government in this behalf.

32. Rights of ordinary proprietors of existing salt-works.—Every proprietor of a private salt-work, other than a private salt work, to which section 31 applies of which, under the provisions of section 17 of the Bombay Salt Act, 1890 (Bom II of 1890) the proprietor was entitled on application to a licence to manufacture or to excavate or collect natural salt at such work, shall continue to be entitled, on application made in accordance with the rules made under this Act, to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act his licence has been cancelled by an officer duly empowered by the Central Government in this behalf.

Provided that the Collector of Central Excise may at any time withdraw or withhold a licence from the proprietor of any such salt work if no salt has been manufactured, excavated or collected in such salt work for the three years ending on the thirtieth day of June last preceding the date of his order or with the previous sanction of the Central Board of Revenue if such salt work has not produced on an average during the said three years at least five thousand maunds of salt per annum.

CHAPTER VI

ADJUDICATION OF CONFISCATIONS AND PENALTIES

33. Power of adjudication.—Where by the rules made under this Act any thing is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged—

(a) without limit, by a Collector of Central Excise

(b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees by an Assistant Collector of Central Excise.

Provided that the Central Board of Revenue may, in the case of any officer performing the duties of an Assistant Collector of Central Excise reduce the limits indicated in clause (b) of this section, and may confer on any officer the powers indicated in clause (a) or (b) of this section.

34. Option to pay fine in lieu of confiscation.—Wherever confiscation is adjudged under this Act or the rules made thereunder the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

35. Appeals.—(1) Any person deeming himself aggrieved by any decision or order passed by a Central Excise officer under this Act or the rules made thereunder may, within three months from the date of such decision or order, appeal therefrom to the Central Board of Revenue, or, in such cases as the Central Government directs to any Central Excise officer not inferior in rank to an Assistant Collector of Central Excise and empowered in that behalf by the Central Government. Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit confirming, altering or annulling the decision or order appealed against.

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order.

(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by section 36, be final

36. **Revision by Central Government**—The Central Government may, on the application of any person aggrieved by any decision or order passed under this Act or the rules made thereunder by any Central Excise officer or by the Central Board of Revenue, and from which no appeal lies, reverse or modify such decision or order

CHAPTER VII

SUPPLEMENTAL PROVISIONS

37. **Power of Central Government to make rules**—(1) The Central Government may make rules to carry into effect the purposes of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(i) provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid,

(ii) prohibit absolutely, or with such exceptions or subject to such conditions as the Central Government thinks fit the production or manufacture of any process of the production or manufacture, of excisable goods or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose

(iii) prohibit absolutely or with such exceptions, or subject to such conditions as the Central Government thinks fit the bringing of excisable goods into British India from the territory of any specified Prince or Chief in India, or the transit of excisable goods from any part of British India to any other part thereof,

(iv) regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market,

(v) regulate the production or manufacture, or any process of the production or manufacture, the possession storage and wholesale sale of excisable goods or of any component parts or ingredients or containers thereof

(vi) provide for the employment of officers of the Crown to supervise the carrying out of any rules made under this Act,

(vii) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation,

(viii) provide for the appointment licensing management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses,

(ix) provide for the distinguishing of goods which have been manufactured under licence of materials which have been imported under licence and of goods on which duty has been paid or which are exempt from duty under this Act

(x) impose on persons engaged in the production wholesale sale (whether on their own account or as brokers or commission agents) storage or manufacture of excisable goods the duty of furnishing information, keeping records and making returns and prescribe the nature of such information and the form of such records and returns the particulars to be contained therein and the manner in which they shall be verified

(xi) require in British India label of such sold or offered or kept for sale bearing a banderol stamp or may be prescribed

(xii) provide for the issue of licences and transport permits and the fees any, to be charged therefor

Provided that the fees for the licensing of the manufacture and refining of salt and saltpetre shall not exceed in the case of each such licence, the following amounts:—namely—

	Rs.
Licence to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	50
Licence to manufacture saltpetre	2
Licence to manufacture sulphate of soda (Kharannu) by solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (Kharannu) by artificial heat	2
Licence to manufacture other saline substances	2

(xiii) provide for the detention of goods plant machinery or material for the purpose of exacting the duty the procedure in connection with the confiscation otherwise than under section 10 or section 28 of goods in respect of which breaches of the Act or rules have been committed and the disposal of goods so detained or confiscated

(xiv) authorise and regulate the inspection of factories and provide for the taking of samples and for the making of tests of any substance produced therein and for the inspection or search of any place or conveyance used for the production storage sale or transport of exposable goods

(xv) authorise and regulate the composition of offences against or liabilities incurred under this Act or the rules made thereunder

(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India

Provided that rules made under this clause shall provide that when steel ingots on which the duty of excise imposed by this Act has been paid or articles of iron or steel manufactured in British India from such ingots are exported out of India there shall be payable to the exporter of such ingots or articles, subject to such conditions as may be prescribed a refund at the following rates namely—

on ingots blooms and billets—

a refund at the rate of four rupees per ton

on other manufactures of iron or steel—

(a) not fabricated—a refund at the rate of five and one third rupees per ton

(b) fabricated—a refund at the rate of six rupees per ton

(xvii) exempt any goods from the whole or any part of the duty imposed by this Act

(xviii) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government or of any factory in which saltpetre is manufactured or refined and regulate the possession, storage and sale of salt within such area

(xix) define an area round any other place in which salt is manufactured, and regulate the possession storage and sale of salt within such area

(xx) authorise the Central Board of Revenue or Collectors of Central Excise appointed for the purposes of this Act to provide by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section

(3) In making rules under this section the Central Government may provide that any person committing a breach of any rule shall where no other penalty is provided by this Act be liable to a penalty not exceeding two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated

38 Publication of rules and notifications—All rules made and notifications issued under this Act shall be made and issued by publication in the official Gazette All such rules and notifications shall thereupon have effect as if enacted in this Act

39. Repeal of enactments—The enactments specified in the Second Schedule are hereby repealed to the extent mentioned in the fourth column thereof. But all rules made, notifications published, licences, passes or permits granted, powers conferred and other things done under any such enactment and now in force shall, so far as they are not inconsistent with this Act, be deemed to have been respectively made, published, granted, conferred or done under this Act.

40. Bar of suits and limitation of suits and other legal proceedings.—(1) No suit shall lie against the Central Government or against any officer of the Crown in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution or other legal proceeding shall be instituted for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

FIRST SCHEDULE

(See Section 3)

Item No	Description of goods	Rate of duty
1	KEROSENE — 'Kerosene' means any inflammable hydro carbon (including any mixture of hydro	
	of 1899), and (i) is intended to be or is ordinarily used in liquid form for purposes of illumination	The rate at which Customs duty is for the time being leviable under the Indian Tariff Act 1934 (XXII of 1934) read with any other enactment for the time being in force
2	MATCHES — Match includes a firework in the form of a match, and, where a match stick has more heads than one capable of being ignited by striking each such head shall be deemed to be a match	
	(1) Matches, manufactured in a factory whose daily output exceeds one hundred gross boxes, in boxes or booklets containing on an average—	
	(i) not more than forty matches	Two rupees
	(ii) more than forty, but not more than fifty matches	Two rupees and eight annas
	(iii) more than fifty, but not more than sixty matches	Three rupees
	(iv) more than sixty, but not more than eighty matches	Four rupees
	(2) Matches, manufactured in a factory whose daily output does not exceed one hundred gross boxes, in boxes or booklets containing on an average—	
	(i) not more than forty matches	One rupee fifteen annas and two pies
	(ii) more than forty, but not more than fifty matches	Two rupees and seven annas
	(iii) more than fifty, but not more than sixty matches	Two rupees fourteen annas and nine pies
	(iv) more than sixty, but not more than eighty matches	Three rupees fourteen annas and four pies
	(3) Matches in boxes containing on an average not more than twelve matches of the type known as "Bengal Lights"	Ten annas per gross of boxes
	(4) All other matches	Eight annas for every 1,440 matches or fraction thereof

Item No.	Description of goods.	Rate of duty.
3	MECHANICAL LIGHTERS— "Mechanical Lighter" means any mechanical or chemical contrivance for causing ignition which is portable and which operates by producing a spark or flame whether by itself or when brought into contact with gas, and includes a mechanical lighter issued from a factory in an incomplete state or requiring for its completion the addition of a flint	Three rupees per lighter.
4	MOTOR SPIRIT— "Motor spirit" means— (a) any inflammable hydro-carbon (including any mixture of hydro-carbons or any liquid containing hydro-carbons) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle, and (b) power grade nature by itself hydro-carbon aforesaid	Fifteen annas per imperial gallon.
5	SALT— "Salt" includes swamp salt, spontaneous salt, and salt or saline solutions made or produced from any saline substance or from salt earth	For the year ending the 31st day of March 1944, the rate fixed by section 2 of the Indian Finance Act, 1943 (VIII of 1943) read with section 5 of the Indian Finance (Supplementary and Extending) Act, 1931 and thereafter the rate fixed annually by Act of the Central Legislature
6	SILVER	Three annas and seven and one-fifth pies per ounce Troy.
7	STEEL INGOTS	Four rupees per ton.
8	SUGAR— "Sugar" means any form of sugar containing more than 50 per cent of sucrose	Three rupees per cwt. Eight annas per cwt.
9	TOBACCO— earth, Unmanufactured I—Virginia Tobacco— A.—Flue-cured— (1) if intended for manufacture into— (a) cigarettes— (ii) containing no imported tobacco (b) buns (c) cheroots (2) If intended for any other purpose	One rupee and twelve annas One rupee and four annas. Eight annas Six annas Two annas One rupee and twelve annas.

Per lb.

Item No.	Description of goods	Rate of duty.
9	TOBACCO— <i>contd.</i>	
	B.—Air cured	Six annas
II.	Country Tobacco—	
	(1) if intended for manufacture into—	
	(a) cigarettes	Six annas
	(b) bisis	Six annas
	(c) cigars or cheroots	Two annas
	(d) hookah tobacco	One anna
	(e) snuff	Six annas
	(2) if intended for sale as chewing tobacco, whether manufactured or merely cured	One anna
	(3) if intended for any other purpose	Six annas
III.	Stalks, stems and other refuse of tobacco—	
	(1) if intended for use in the preparation of any form of manufactured tobacco.	One anna
	(2) if intended to be used for agricultural purposes	Nil
	<i>Manufactured</i>	
IV.	Cigars and cheroots of which the value—	
	(i) exceeds Rs 30 a hundred	Six rupees
	(ii) exceeds Rs 25 a hundred but does not exceed Rs 30 a hundred.	Five rupees
	(iii) exceeds Rs 20 a hundred but does not exceed Rs 25 a hundred	Four rupees
	(iv) exceeds Rs 15 a hundred but does not exceed Rs 20 a hundred	Three rupees
	(v) exceeds Rs 10 a hundred but does not exceed Rs 15 a hundred	Two rupees
	(vi) exceeds Rs 5 a hundred but does not exceed Rs 10 a hundred.	One rupee
	(vii) exceeds Rs 2 8 0 a hundred but does not exceed Rs 5 a hundred.	Eight annas
	(viii) exceeds Rs 1 4 0 a hundred but does not exceed Rs 2 8 0 a hundred.	Four annas
	(ix) exceeds Rs 10 but does not exceed Rs 1-4-0 a hundred.	Two annas
10	TYRES—	
	"Tyre" means a pneumatic tyre in the manufacture of which rubber is used and includes the inner tube and the outer cover of such a tyre.	Ten per cent. <i>ad valorem</i> .
11	VEGETABLE PRODUCT—	
	"Vegetable product" means any vegetable oil or fat which, whether by itself or in admixture with any other substance, has by hydrogenation or by any other process been hardened for human consumption.	Five rupees per cwt

SECOND SCHEDULE.

(See Section 39.)

Year	No	Short Title.	Extent of repeal.
1879	XVI	The Transport of Salt Act, 1879	The whole.
1882	XII	The Indian Salt Act, 1882	The whole.
1889	IV	The Madras Salt Act, 1889	The whole.
1890	II	The Bombay Salt Act, 1890	The whole.
1908	X	The Indian Salt duties Act, 1908	The whole.
1917	II	The Motor Spirit (Duties) Act, 1917	The whole.
1922	XII	The Indian Finance Act, 1922	The whole.
1930	XVIII	The Silver (Excise Duty) Act, 1930	The whole.
1931	..	The Indian Finance (Supplementary and Extending) Act, 1931.	The whole.
1934	XIV.	The Sugar (Excise Duty) Act, 1934	The whole.
1934	XVI.	The Matches (Excise Duty) Act, 1934.	The whole.
1934	XXIII	The Mechanical Lighters (Excise Duty) Act, 1934	The whole.
1934	XXXI	The Iron and Steel Duties Act, 1934	The whole.
1938	XIII	The Sind Salt Law Amendment Act, 1938	The whole.
1941	X	The Tyres (Excise Duty) Act, 1941	The whole.
1943	X	The Tobacco (Excise Duty) Act, 1943	The whole.
1943	XI	The Vegetable Product (Excise Duty) Act, 1943	The whole.

on follow the same general pattern, and many of the provisions of the various Acts are identical or closely similar, and this is the case also with many of the statutory rules. This agglomeration of statutes and regulations dealing with similar matters is neither convenient for the public nor conducive to well organised administration. Moreover, under this disjunctive arrangement, we have not, and cannot readily construct, a comprehensive code of standing instructions for the governance of the excise staff and each set of statutory rules is burdened with departmental instructions in which the public has no concern or interest and which, even taken together, do not form an adequate administrative code.

2 It is accordingly proposed to consolidate in a single enactment all the laws relating to central duties of excise and to the tax on salt and to embody therein a Schedule, similar to that in the Indian Tariff Act, 1934, setting forth the rates of duty leviable on each class of goods. At the same time the statutory rules will be similarly amalgamated and disembarrassed of their unnecessary detail. The Act and the consolidated statutory rules, together with as many manuals of departmental instructions as may be necessary, will then form a complete Central Excise Code, which will simplify the administration of this branch of the revenue system and aid such further development as may be necessary; and any proposal for a new excise which may hereafter be laid before the Legislature may then take the simpler and more convenient form of a clause in the annual Finance Bill.

3. The intention of the Bill is to reproduce provisions already existing in the Acts which it is proposed to repeal, but in the process certain small amendments have been made, either in modernising the language or for dovetailing the provisions and otherwise adapting them to present circumstances. These amendments are the minimum consistent with such blending and adaptation.

4. The combination of a number of separate measures, each of which has been moulded to fit its particular subject, necessarily includes their special features as well as those which are common to others in the group and it follows that certain provisions which have hitherto applied only to certain goods will, after consolidation, become applicable over the whole field, either as a matter of course or by notification as circumstances may require. In particular the Bill provides that certain features of the salt law relating to transport by small coastal craft will become adaptable, as necessary, in the administration of other excise duties.

5. No interference of any kind is made in any of the existing duties. These have been merely collected from the various Acts and reproduced in the Schedule; and the item relating to salt has been so worded as to preserve to the Central Legislature the right which it has so long exercised of voting annually on the rate of duty to be fixed.

6 There follows in the form of Notes on Clauses a tabular statement showing the source of each provision of the Bill.

NOTES ON CLAUSES

Clause	Sources	Remarks.
2	(a) Tobacco (Excise Duty) Rules, r 2 (ix) (b) (c) Tobacco (Excise Duty) Act, 1943, s 2 (b) (d) (e) Motor Spirit (Duties) Act, 1917 s 2, Matches (Excise Duty) Act, 1934, s 2 (a), Mechanical Lighters (Excise Duty) Act, 1934, s 2 (a).	Formal Formal
(f) (i)	Tobacco (Excise Duty) Act, 1943, s 2 (e).	The general definition is new and is designed to cover <i>inter alia</i> the refinement of motor spirit, and the assembling of mechanical lighters. The last portion is from the Tobacco (Excise Duty) Act, 1943
(ii)	Indian Salt Act 1882, s 3, Madras Salt Act, 1889, s 3 (f)	
(g)		Formal
(h)	Tobacco (Excise Duty) Act, 1943, s 2 (d)	
(i)	Indian Salt Act, 1882, s 3	
(j)	Bombay Salt Act, 1890, s 3 (h)	
(k)	Tobacco (Excise Duty) Act, 1943, s 2 (e)	
3 (1)	All Excise Duty Acts	
(2) & (3)	Indian Tariff Act, 1934, ss 2 (2) 2 (3)	
4	Tyres (Excise Duty) Act, 1941, s 3 (2), Tobacco (Excise Duty) Act, 1943, s 4	
5	Sugar (Excise Duty) Act, 1934 s 6, Tobacco (Excise Duty) Act 1943, s 5, Vegetable Product (Excise Duty) Act, 1943, s 7	
6	Indian Salt Act, 1882 s 6, Madras Salt Act, 1889 s 8, Bombay Salt Act 1890 s 11, Matches (Excise Duty) Act, 1934, s 9, Mechanical Lighters (Excise Duty) Act, 1934, s 7, Tobacco (Excise Duty) Act, 1943, s 6	
7	Bombay Salt Act 1890, s 36, Tobacco (Excise Duty) Act, 1943, s 7	
8	Tobacco (Excise Duty) Act, 1943, s 8	
9		
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11		
12		

Clause.	Source	Remarks
16	Madras Salt Act, 1889, s. 70, Criminal Procedure Code 1899, s. 45	
17	Indian Salt Act, 1882, s. 14	
18	Madras Salt Act, 1889, s. 51, Bombay Salt Act, 1890, s. 40	
19	Madras Salt Act, 1889, s. 53, Bombay Salt Act, 1890, s. 44	
20	Madras Salt Act, 1889, s. 55, Bombay Salt Act, 1890, s. 45	The Madras provision requires that the accused person shall be forwarded to, or directed to appear before, a Salt officer: the Bombay provision requires the Police officer to investigate the offence. The draft clause merely requires the Police officer to forward the accused person to a Magistrate.
21	Madras Salt Act, 1889, s. 65, Bombay Salt Act, 1890, s. 46	
22	Indian Salt Act, 1882, s. 25, Madras Salt Act, 1889, s. 77, Bombay Salt Act, 1890, s. 48	
23	Madras Salt Act, 1889, s. 78, Bombay Salt Act, 1890, s. 48A.	
24 to 30	" " " " " " " "	
31	" " " " " " " "	
32	" " " " " " " "	
33 to 36	" " " " " " " "	
37 (1)	" " " " " " " "	
(2)	(i) " " " " " " " " (ii) " " " " " " " " (iii) " " " " " " " " (iv) " " " " " " " " (v) " " " " " " " "	
	Madras Salt Act, 1889, s. 85A, Bombay Salt Act, 1890, s. 58, All Excise Duty Acts, except the Iron and Steel Duties Act, 1934	
(vi)	" " " " " " " "	
(vi)	Sugar (Excise Duty) Act, 1934, s. 11 (2) (b), Tobacco (Excise Duty) Act, 1934, s. 14 (2) (iv)	
(vii)	" " " " " " " "	New
(viii)	Tobacco (Excise Duty) Act, 1934, s. 14 (2) (v)	
(ix)	Matches (Excise Duty) Act, 1934, s. 18 (2) (c), Mechanical Lighters (Excise Duty) Act 1934, s. 15 (2) (b)	
(x)	All Excise Duty Acts	
(xi)	Matches (Excise Duty) Act, 1934, s. 8 (2) and 18 (2) (d)	
(xii)	Indian Salt Act, 1882, s. 6, Madras Salt Act, 1889, s. 85 (a), Matches (Excise Duty) Act, 1934, s. 18 (2) (f), Mechanical Lighters (Excise Duty) Act, 1934, s. 15 (2) (c).	
	Mechanical Lighters (Excise Duty) Act, 1934, s. 14 (2) (iii)	

